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No. 84-1097 (9)

In The
Supreme Court of the United States
October Term, 1985

S. SIMCHA GOLDMAN,
Petitioner,

v.

CASPER W. WEINBERGER,
Secretary of Defense, et al.,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED JANUARY 7, 1985
CERTIORARI GRANTED JUNE 17, 1985

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July 10, 1981	Motion for Preliminary Injunction Argued and Granted
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July 13, 1981	Order of the United States District Court Granting Motion for Preliminary Injunction
July 21, 1981	Motion by Plaintiff to Use Plaintiff's Deposition Testimony at Trial
August 6, 1981	Order Granting Plaintiff's Motion to Use Plaintiff's Deposition Testimony at Trial
September 9, 1981	Answer by Secretary of Defense et al. to Plaintiff's Complaint
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April 29, 1982	Order of United States District Court filed April 26, 1982
June 25, 1982	Notice of Appeal by Defendants from Order of United States District Court filed April 26, 1982
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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 81-1522

S. SIMCHA GOLDMAN,
449 North Laurel Avenue
Los Angeles, California 90048
(213) 655-9410

Plaintiff,

v.

SECRETARY OF DEFENSE,
The Pentagon
Washington, D.C. 20301

and

SECRETARY OF THE AIR FORCE,
The Pentagon
Washington, D.C. 20301

Defendants.

COMPLAINT FOR DAMAGES AND DECLARATORY AND INJUNCTIVE RELIEF

(Filed July 2, 1981)

1. This action arises under the Free Exercise Clause of the First Amendment to the United States Constitution. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1361.

2. Plaintiff is a member of the Orthodox Jewish faith, and is an ordained rabbi. Defendants are officials of the United States of America and this action is brought against them in their official capacities.

3. Plaintiff is a Captain in the United States Air Force on active duty, and has been stationed at March Air

Force Base ("March AFB"), Riverside, California, since September 1977. Plaintiff is currently assigned to the Mental Health Clinic of the Air Force Regional Hospital at March AFB, where he serves as a clinical psychologist.

4. Orthodox Jewish religious practice requires a Jewish male to keep his head covered at all times. In observance of that religious requirement, plaintiff wears a skull cap ("yarmulke") at all times.

5. Plaintiff has continuously worn a yarmulke since prior to his assignment to March AFB. Since his assignment to March AFB in September 1977, plaintiff has continuously worn a yarmulke, including while he is in uniform, as required by his religion.

6. For the three and one-half year period from September 1977, to May 1981, plaintiff's superior officers at March AFB raised no objection to his wearing a yarmulke while in uniform.

7. On May 8, 1981, Colonel Joseph Gregory, the Hospital Commander at March AFB, informed plaintiff that wearing a yarmulke violated the Air Force's Dress Code Regulation (AFR) 35-10. Colonel Gregory ordered plaintiff to cease wearing a yarmulke indoors while in uniform at all places on base, except that plaintiff was specifically permitted to continue wearing his yarmulke while working and in uniform at the Regional Hospital located on the base.

8. Upon receiving the May 8, 1981, order, plaintiff informed Colonel Gregory that the wearing of a yarmulke was required by his Orthodox Jewish religion and was a protected religious observance pursuant to the First Amendment. Plaintiff requested permission to continue his previously unchallenged practice of wearing a yar-

mulke at all times and in all places while in uniform at March AFB. Plaintiff's request was denied.

9. On May 19, 1981, in an effort to avoid litigation, plaintiff's counsel contacted the Office of the Air Force Assistant General Counsel for Manpower and Personnel Affairs, explained plaintiff's situation, and requested that the Air Force continue to permit plaintiff to wear his yarmulke at all times as he had for the past three and one-half years. Counsel's efforts to resolve this matter through negotiations extended over a period of several weeks, but were not successful.

10. On June 23, 1981, plaintiff was ordered by Colonel Gregory to cease wearing his yarmulke anywhere while in uniform at March AFB, including the Regional Hospital. Plaintiff was again informed that wearing a yarmulke violated AFR 35-10.

11. Plaintiff explained once again the nature of his religious observance and his desire to continue wearing his yarmulke at all times, as required by his religion. Plaintiff requested permission from Colonel Gregory to appear for duty in civilian clothes, pursuant to an express exemption contained in AFR 35-10, so that his wearing of a yarmulke would not violate defendants' interpretation of the regulation. Plaintiff's request was denied.

12. On June 24, 1981, plaintiff received a letter of reprimand from Colonel Gregory for continuing to wear his yarmulke while in uniform in violation of the June 23 order, and in violation of defendants' interpretation of AFR 35-10. Plaintiff has been threatened with additional sanctions, including a court-martial, for violation of the

June 23 order and for violation of defendants' interpretation of AFR 35-10.

13. Following receipt of the letter of reprimand, plaintiff submitted a written request to Colonel Gregory that formal processing of the letter of reprimand be delayed until June 29, 1981, the date upon which plaintiff's military area defense counsel was scheduled to return to March AFB. Plaintiff's request was granted.

14. On June 25, 1981, plaintiff was summoned to Colonel Gregory's office and was informed by Colonel Gregory that, in light of plaintiff's current problems with the Air Force, resulting from plaintiff's insistence upon wearing his yarmulke despite the provisions of AFR 35-10, Colonel Gregory had decided to withdraw a previously positive recommendation he had submitted in favor of plaintiff's application for a one year extension of his service in the Air Force, and had, that day, submitted a negative recommendation on that application.

15. The orders issued to plaintiff prohibiting him from wearing a yarmulke while in uniform at March AFB violate the First Amendment of the United States Constitution.

16. Plaintiff has exhausted all meaningful available channels to postpone enforcement of the June 23 order, or to have the order withdrawn. There is no further appeal within the Air Force from the punitive actions taken against plaintiff and threatened to be taken against plaintiff, as specified in paragraphs 7 through 14 of this Complaint.

17. The actions already taken against plaintiff and the threat of additional sanctions against plaintiff, includ-

ing criminal prosecution, if he does not cease wearing a yarmulke while in uniform, jeopardize plaintiff's ability to observe deeply held religious beliefs, violate the First Amendment to the United States Constitution, and jeopardize plaintiff's ability to continue serving in and to be employed gainfully by the Air Force.

18. Any effort by defendants or anyone acting under their supervision or control to enforce or apply AFR 35-10 against plaintiff or any enlisted man who wears a yarmulke for religious reasons, is an unconstitutional denial of rights guaranteed by the First Amendment to the United States Constitution.

WHEREFORE, plaintiff prays that this Court enter an Order:

1. Declaring that the conduct described in paragraphs 7 through 14 of this Complaint violates the First Amendment to the Constitution of the United States;

2. Declaring Air Force Dress Code Regulation (AFR) 35-10 invalid and unlawful as applied to any person who wears a yarmulke for religious reasons;

3. Enjoining the defendants, their agents, subordinates, or anyone acting in concert with them from applying or enforcing AFR 35-10 against plaintiff or any person who wears a yarmulke for religious reasons;

4. Directing defendants, their agents, subordinates or anyone acting in concert with them, to expunge from plaintiff's military records all references to disciplinary action, sanctions or penalties (including Colonel Gregory's negative recommendation concerning plaintiff's continued military service) resulting directly or indirectly from plain-

tiff's insistence upon wearing a yarmulke, despite the provisions of AFR 35-10;

5. Awarding plaintiff damages, attorneys' fees and costs of this action; and

6. Granting such other and further relief as this Court deems just and proper.

/s/ Nathan Lewin/DJB
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Attorneys for Plaintiff

Dated: 7/2/81

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 81-1522

S. SIMCHA GOLDMAN,

Plaintiff,

v.

SECRETARY OF DEFENSE, *et al.*,

Defendants.

ANSWER

First Defense

The complaint fails to state a claim upon which relief can be granted.

Second Defense

Plaintiff has failed to exhaust his administrative remedies.

Third Defense

The defendants answer the numbered paragraphs of the complaint as follows:

1. This paragraph contains plaintiff's characterization of his action, jurisdiction allegations, and conclusions of law, to which no answer is required, but insofar as an answer may be deemed to be required, defendants deny.

2. Admit.

3. Defendants admit this paragraph accurately describes plaintiff's status in the Air Force on the date the complaint was filed. Defendants aver that as of September 1, 1981, plaintiff is no longer on active duty in the Air Force, no longer is assigned to the Air Force Regional

Hospital at March Air Force Base. Defendants further aver that plaintiff still holds a Reserve commission in the United States Air Force.

4. Deny first sentence. Deny second sentence, except admit that plaintiff wears a skull cap ("yarmulke") at all times.

5. Admit first sentence. Admit second sentence, except deny that wear of the yarmulke is required by plaintiff's religion.

6. Admit.

7. Admit.

8. Admit.

9. Admit.

10. Admit.

11. Admit first sentence, except deny that the wear of a yarmulke is required by plaintiff's religion. Admit second and third sentences.

12. Admit.

13. Admit.

14. Admit.

15. This paragraph contains conclusions of law and not allegations of fact to which an answer may be deemed required, but insofar as an answer may be deemed required, defendants deny.

16. Admit first sentence. Admit second sentence, except deny there is no further appeal within the Air Force concerning the letter of reprimand plaintiff has re-

ceived. Defendants aver that the Air Force Board for Correction of Military Records offers plaintiff a forum for exhaustion of administrative remedies under 10 U.S.C. § 1552 (See 32 C.F.R. § 865.1 et. seq.).

17. This paragraph contains plaintiff's characterization of his action and conclusions of law, to which no answer is required, but insofar as an answer may be deemed to be required, defendants deny.

18. This paragraph contains plaintiff's conclusions of law to which no answer is required, but insofar as an answer may be deemed to be required, defendants deny.

Defendants are not required to answer plaintiff's Prayer of Relief. Answering further, any and all allegations of the Complaint not hereinbefore specifically answered are denied.

Respectfully submitted,

/s/ Charles F. C. Ruff
United States Attorney

/s/ Royce C. Lamberth
Assistant United States Attorney

/s/ R. Craig Lawrence
Assistant United States Attorney

OF COUNSEL:

FRANCIS S. MORAN, JR.
Major, USAF
General Litigation Division
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Washington, D. C. 20330

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PLAINTIFF'S DEPOSITION EXHIBIT "A"

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA
Civil Action No. 81-1522

S. SIMCHA GOLDMAN,

Plaintiff,

v.

SECRETARY OF DEFENSE, *et. al.*,

Defendants.

DEFENDANTS' RESPONSES TO
PLAINTIFF'S INTERROGATORIES

The following responses by defendants to plaintiff's interrogatories are served upon plaintiff pursuant to Rule 33, Fed. R. Civ. P.:

* * *

2. With respect to plaintiff's service in the Air Force from September 1977 through May 7, 1981:

(a) State in detail and with specificity why plaintiff was permitted to wear his yarmulke while in uniform at March Air Force Base during the entire period;

(b) Describe in detail with specificity, including the date(s) of and all persons involved in, each and every adverse comment, reaction or criticism received by defendants or any of their agents or subordinates regarding plaintiff's wearing of his yarmulke while in uniform during the entire period; and

(c) Identify each and every document which relates directly or indirectly to your answers to this interrogatory.

Response to 2.

(a) When Captain Goldman came to March AFB in 1977 he kept a low profile in and about the hospital. He did not take his meals in the cafeteria and did not often leave his duty station at the mental health clinic. To and from work he wore his service cap over the yarmulke. In 1978 Col. Smith, the hospital commander, received a complaint about wearing the yarmulke at the hospital. He contacted the Surgeon General at HQ SAC and was advised that it was his decision as commander whether or not to allow it. Col. Smith decided not to confront Capt. Goldman over the issue. In August of 1980 Col. Smith was replaced by Col. Gregory. Col. Gregory questioned whether or not Capt. Goldman should be allowed to wear the yarmulke while in uniform. He was advised by Col. Robert Young, then hospital administrator, now a member of HQ SAC/SG staff, that the previous hospital commander had allowed it. Because of this Col. Gregory decided not to confront Capt. Goldman at that time.

(b) In 1978 the hospital commander, Col. Smith, received a complaint from CMS. George Johnson, the NCOIC of nursing services, about Capt. Goldman wearing a yarmulke on duty at the hospital. In April 1981, Maj. Rakowsky received a complaint from Capt. Daniel F. Bouchard, circuit trial counsel, that Capt. Goldman had appeared to testify in a court-martial wearing a skull cap. This complaint was relayed to the hospital commander, Col. Gregory.

(c) Affidavit of CMS. George Johnson dated 23 July 81. Affidavit of Capt. Daniel F. Bouchard dated 16 July 81.

3. With respect to Colonel Gregory's order issued to plaintiff on or about May 8, 1981, directing plaintiff to stop wearing his yarmulke while in uniform at all places at March Air Force Base other than the Regional Hospital:

(a) Explain in detail and with specificity the basis for Colonel Gregory's order;

(b) State whether you maintain that plaintiff's wearing of his yarmulke while in uniform at the Regional Hospital violates the provisions of AFR 35-10;

(c) Identify each and every person with whom Colonel Gregory consulted in connection with his decision to issue the May 8, 1981 order to plaintiff; and

(d) Identify each and every document which relates directly or indirectly to your answers to this interrogatory.

Response to 3.

(a) Prior to April of 1981 Col. Gregory had been advised and believed that Capt. Goldman had permission to wear the yarmulke at the hospital. In April 1981 he was advised that Capt. Goldman had appeared to testify in a court-martial wearing the yarmulke in violation of AFR 35-10. Based upon this information and Col. Gregory's understanding that Col. Smith had allowed Capt.

Goldman to wear the yarmulke at the hospital, Col. Gregory ordered Capt. Goldman to wear the yarmulke only at the hospital.

(b) Yes.

(c) Col. Charles C. McDonald
Maj. Ronald J. Rakowsky
Lt. Col. Ledro Justice
Col. James R. Plummer
Col. Julius Archie

(d) Memo dated 8 May 1981.

* * *

5. With respect to Colonel Gregory's June 23, 1981 order to plaintiff directing that he remove his yarmulke at all times and at all places while in uniform:

(a) Explain in detail and with specificity why Colonel Gregory changed his order from that initially issued on May 8, 1981;

(b) Identify each and every individual with whom Colonel Gregory consulted with respect to the issuance of his June 23, 1981 order; and

(c) Identify each and every document which related directly or indirectly to your answers to this interrogatory.

Response to 5.

(a) From the period of May 8, 1981 to June 23, 1981, the parties in this dispute were attempting to reach an acceptable compromise. Col. Plummer, the installation Chaplain contacted Chaplain Madden at HQ SAC/HC in order to ascertain

whether or not the wearing of a yarmulke was a requirement of the Jewish Orthodox religion. Chaplain Madden did not know so Col. Plummer contacted Rabbi Selwyn G. Geller at HQ ATC/HC. Rabbi Geller advised Col. Plummer to contact the Jewish Welfare Board (JWB), Col. Plummer was advised by both Dr. Coram and Rabbi Messing at the JWB the wearing of a yarmulke was highly recommended and encouraged but as not required. A Rabbi Kobrinetz, USAF Reserve colonel, was sent to March AFB to speak with base command personnel and Capt. Goldman in an attempt to resolve the matter. On June 15, 1981, while Rabbi Kobrinetz was at March AFB, Col. Gregory was contacted by Brig. Gen. Greendyke, HQ SAC/SG, who advised Col. Gregory to order Goldman not to wear the yarmulke at anytime while in uniform. Col. Gregory spoke with Col. McDonald and was advised to take no action until Rabbi Kobrinetz had had an opportunity to speak with Captain Goldman. After all attempts to resolve the matter failed, on June 23, 1981, Col. Gregory ordered Capt. Goldman not to wear the yarmulke while in uniform.

(b) Col. Plummer, Maj. Rakowsky, Col. McDonald, Brig. Gen. Greendyke, Col. (Rabbi) Kobrinetz.

(c) Two memos for record dated 15 June 1981; memo for record dated 22 June 1981; three memos for record dated 23 June 1981; order dated 23 June 1981.

6. With respect to Colonel Gregory's issuance of a letter of reprimand to plaintiff on June 24, 1981:

(a) State in detail and with specificity why Colonel Gregory felt it necessary and appropriate to issue a letter of reprimand or to pursue any sanctions against plaintiff for his failure to remove his yarmulke while in uniform;

(b) Identify each and every individual with whom Colonel Gregory consulted with respect to the issuance of a letter of reprimand to plaintiff on June 24, 1981;

(c) State the substance of each and every discussion between or among Colonel Gregory and any individual identified in response to subparagraph (b) above; and

(d) Identify each and every document which relates directly or indirectly to your answers to this interrogatory.

Response to 6.

(a) On June 23, 1981 Capt. Goldman was given a direct and lawful order by his commander, Col. Gregory, not to wear his yarmulke while in uniform. On June 24, 1981 Capt. Goldman appeared in uniform, wearing the yarmulke, in violation of Col. Gregory's order and in violation of AFR 35-10. For this reason he received a letter of reprimand for violation of AFR 35-10.

(b) Col. McDonald, Col. Blaisdale, Col. Plummer, Lt. Col. Hayslett, Major Rakowsky.

(c) Discussions with the above parties involved the active participation and advice of Major Ronald J. Rakowsky in his capacity as legal advisor. The

substance of any discussion is therefore privileged. In one discussion subsequent to the June 24, 1981 letter of reprimand and prior to Capt. Goldman's response Col. Gregory spoke with Col. McDonald and was advised that any action taken should be commensurate with the offense and that if Capt. Goldman continued to violate Col. Gregory's order and AFR 35-10 future progressive levels of discipline should be taken.

(d) Two memos for record dated 15 June 1981; memo for record dated 22 June 1981; three memos for record dated 23 June 1981; order dated 23 June 1981; two memos for record dated 24 June 1981.

7. With respect to Colonel Gregory's decision to withdraw his previously positive recommendation on plaintiff's application for an extension of service in the Air Force and to substitute, in its stead, a negative recommendation on that application:

(a) State in detail and with specificity why Colonel Gregory felt it necessary and appropriate to withdraw his previously positive recommendation and substitute a negative recommendation against plaintiff for his failure to remove his yarmulke while in uniform;

(b) Identify each and every individual with whom Colonel Gregory consulted with respect to his withdrawal of his previously positive recommendation and substitution of a negative recommendation against plaintiff on June 24, 1981;

(c) State the substance of each and every discussion between or among Colonel Gregory and any individual identified in response to subparagraph (b) above; and

(d) Identify each and every document which relates directly or indirectly to your answers to this interrogatory.

Response to 7.

(a) In early May 1981 the Air Force Office of Special Investigation (AFOSI) completed an investigation of Capt. Goldman concerning allegations that he had received monetary compensation for work performed off-base during normal duty hours. At this same time Capt. Goldman went to Col. Gregory with a request to extend his service in order to apply for indefinite reserve status. Because of the unfavorable information contained in the AFOSI report Col. Gregory gave Capt. Goldman a tentative positive recommendation. When Capt. Goldman's subsequent behavior showed a disregard for Air Force regulations and command authority Col. Gregory decided to withdraw the tentative recommendation and replace it with a negative recommendation.

(b) Col. McDonald, Col. Blaisdell, Col. Plummer, Lt. Col. Hayslett, Major Rakowsky.

(c) The discussions involved the active participation of Major Ronald J. Rakowsky in his capacity as legal advisor and the substance of said discussions is privileged.

(d) AFOSI investigation No. 8118D95-18; letter of reprimand; request to establish active digest file with attachments.

8. Identify each and every person, civilian or military, who has complained to defendants or any of their agents concerning plaintiff's wearing of a yarmulke while in uniform at March Air Force Base, and with respect to each person identified, state the substance of their objections, the date on which each such objection was made, and to whom each such objection was made, and identify each and every document which relates directly or indirectly to your response to this interrogatory.

Response to 8.

CMS George Johnson, NCOIC of Nursing Services, complained to Col Lawrence Smith, the hospital commander, in 1978. He related that several of the younger Air Force members were upset that they were required to live up to standards of dress and Grooming while Capt. Goldman was not. In April of 1981 Capt. Daniel F. Bouchard, Circuit Trial Counsel, complained to Major Ronald J. Rakowsky, the Staff Judge Advocate, that Capt. Goldman had appeared to testify in a court-martial wearing a skull cap in violation of AFR 35-10. CMS. Johnson has executed an affidavit dated 23 July 81 and Capt. Bouchard has executed an affidavit dated 17 July 81. Charles Thompson (MSgt, retired) sent a letter to Maj. Gen. Emmanuel, Assistant Deputy Chief of Staff for Manpower and Personnel, a copy of which is delivered herewith to plaintiff. H. Katz sent a postcard to Judge Robinson, c/o March Air Force Base, a copy of which is delivered herewith to plaintiff. Ted Barbee sent

a letter to the Secretary of Defense, a copy of which is delivered herewith to plaintiff.

9. With respect to Air Force Regulation 35-10:

(a) State all exemptions which have been permitted by the Air Force to the express requirements of AFR 35-10, and identify all individuals who have requested such exemptions and all documents which relate directly or indirectly to requests for such exemptions;

(b) State whether the Air Force allows ministers or other religious functionaries to wear clothing other than that specified in AFR 35-10, and if so, describe in detail and with specificity each variation permitted;

(c) State whether there are other individuals in the Air Force whom the Air Force allows to wear a yarmulke despite the provisions of AFR 35-10, and, if so, identify each and every such individual;

(d) State whether the Air Force allows for any religious observances which violate the express provisions of AFR 35-10 and, if applicable, state in detail and with specificity each and every such religious observance which the Air Force allows, and identify each and every person in the Air Force for whom such variations are granted;

(e) Identify each and every document which relates directly or indirectly to your answers to this interrogatory.

Response to 9.

(a) No exemptions to AFR 35-10 requirements have been granted to members as a result of their individual request. While provisions for exemption exist in the regulation they apply to certain categories or groups of persons based on medical reasons or operational necessity. Currently, unit commanders are authorized to exempt individual members from shaving as part of the medical treatment for Pseudofolliculitis Barbae (ingrown hairs). Exemptions are granted based on medical recommendation and not individual request and normally do not exceed 90 days. As such, they are temporary in nature and do not constitute a permanent change to appearance standards. Exemption authority for beards is contained in AFR 35-10, Table 1-1, Line 1.

Additionally, the Commander, Office of Special Investigations, has been delegated authority to exempt dress and grooming requirements for selected members engaged in investigative and counterintelligence situations where strict adherence to the standards could compromise the operations. Waiver requests and approval, dated 29 September 1974, 4 November 1974 and 5 May 1978.

Authority for exemptions in both of the above cases is delegated to field commanders for use on an as required basis. Names of members granted the waivers are not readily available as we have established no requirement for units to report the desired data.

(b) Chaplains and chapel management personnel wear vestments, appropriate civilian attire, or the prescribed Air Force uniform when they conduct or assist with worship services, liturgies and ceremonies. (para 11, AFR 265-1) These are normally scheduled occasions, such as Sunday/Sabbath services and scheduled services on holy days established in the liturgical calendar of the religious group to which the celebrant belongs. Vestments, or portions thereof, might also be worn by a chaplain in performance of emergency rites, such as baptisms, confessions, or last rites for the dying, which by nature are not scheduled events. In such cases, wearing of non-uniform items would be only during the actual performance of the rite. Vestments of civilian attire worn for scheduled observances, or portions of such vestments worn for emergency ministries, are limited to those prescribed by the religious group to which the celebrant belongs.

(c) Exemption authority for AFM 35-10 standards of dress and grooming rests with the Air Force Manpower and Personnel Center, Randolph Air Force Base, Texas. No exemption has been granted to wear a yarmulke. Defendants have recently discovered an individual on active duty, Chaplain (Rabbi) Fred Lewin, who is known to wear a yarmulke in uniform. To our knowledge, he has not applied for nor been granted, an exemption to do so.

(d) Dress provisions described in paragraph (b) above although not specifically addressed in AFR 35-10 are permitted during scheduled religious ob-

servances or emergency ministries for the duration of services only. In addition, chaplains conducting military religious ceremonies give guidance for wear of military headgear. Otherwise, headgear will not be worn during religious services not associated with a military ceremony (AFR 35-10, paragraph 1-6h (2) (d)). Notwithstanding this restriction and the prohibition on wear of non-uniform items with the uniform, wear of the yarmulke while in uniform is allowed while attending Sabbath or holy day services. In these cases, the yarmulke is worn only within the confines of the facility in which the service is held, and only for the duration of the service.

(e) All documents are referenced in response 9. (a)-(d), above.

10. State whether the Air Force has made inquiry concerning, commissioned a study of, or otherwise sought to determine whether the wearing of yarmulke by an airman interferes with the Air Force's performance of its military mission, and if so, identify each such inquiry, and identify each and every document which relates directly or indirectly to your answer to this interrogatory.

Response to 10. No

11. Identify all studies made by the Air Force or relied upon by the Air Force concerning:

(a) Psychological attitudes which contribute to military effectiveness; and

(b) Development and maintenance of intrinsic motivation in the military setting; and

(c) The relationship between strict enforcement of a dress code and discipline, morale, esprit de corps and mission effectiveness; and

(d) The formation of policies regarding uniformity of dress by Air Force personnel, including any harm to the Air Force's military mission caused by lack of uniformity.

Response to 11.

It is impossible to determine specific studies or the confluence of empirical data upon which defendants can reasonably state decisions have been based concerning the four subparagraphs of question 11. However, in an attempt to provide plaintiff with an available source of empirical knowledge in these areas, defendants have attached hereto listings of studies in each of the four areas, not necessarily limited to those made by the Air Force. Such studies are available for production at the Defense Technical Information Center, Cameron Station, Virginia, and may be inspected there.

* * *

13. State in detail and with specificity the basis upon which defendants contest the validity and/or authenticity of plaintiff's religious belief and practice of wearing a yarmulke at all times; identify all persons with whom defendants or their agents have consulted with respect to the validity of plaintiff's observances and practices; and identify each and every document which relates directly or indirectly to your answers to this interrogatory.

Response to 13.

Col. James R. Plummer, the base Chaplain, contacted Chaplain Madden (HQ SAC/HC), Rabbi Geller (HQ

ATC/HC), Dr. Coram (Jewish Welfare Board). He was advised by Dr. Coram and Rabbi Messing that the wearing of a yarmulke is a time honored tradition of the Jewish culture. They further advised that although it is encouraged it is not required. Defendant has also been advised by Rabbi Kobrinetz, a USAF Reserve colonel, that the wearing of a yarmulke is not required.

* * *

The foregoing responses are based upon information furnished by the appropriate staff agencies. I declare under the penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on August 17 1981.

/s/ Francis S. Moran, Jr. Major, USAF
General Litigation Division
Office of The Judge
Advocate General
United States Air Force

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action
No. 81-1522

S. SIMCHA GOLDMAN,

Plaintiff,

v.

CASPAR W. WEINBERGER,
Secretary of Defense,
Et Al.,

Defendants,

Washington, D. C.
Thursday, September 10, 1981

The above-entitled cause came on for trial before The Honorable Aubrey E. Robinson, Jr., United States District Judge, commencing at 9:42 A.M.

Appearances:

On behalf of the Plaintiff:
David J. Butler, Esq.
Nathan Lewin, Esq.
Robert Smith, Esq.

On behalf of the Defandants:
R. Craig Lawrence, Esq.
Assistant United States Attorney
Maj. Frank Moran, U. S. Air Force
Air Force Litigation Division

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(p. 10) MR. LAWRENCE: May it please the court: I am Craig Lawrence, Assistant United States Attorney. I represent the defendants in this action.

With me at counsel's table is Major Frank Moran of the Air Force Litigation Division. He will assist in the presentation of the defense.

Your Honor needs very little further introduction into the case currently before you. The critical question remaining for Your Honor's determination is whether the Air Force is able to justify the basis for the regulation and its requirement that uniform dress and appearance standards are necessary to prepare the Air Force to perform its mission.

Your Honor, we will call three witnesses. Those witnesses will reflect in two parts.

General Usher will testify briefly with regard to mission impact and the necessity for the regulation.

(p. 11) Chief Master Sergeant Matthews will testify as to, in particular, reactions to the determinations which have been made as a result of the awareness of Captain Goldman's wearing of the yarmulke.

And, finally, Chaplain Reeves will testify briefly about religious practices and traditional dresswear of other religions.

Your Honor, on that basis, the defendants would call their first witness, Major General Usher, to the stand.

The Court. Very well.

* * *

(p. 12) *Direct Examination*

BY MR. LAWRENCE:

Q. General Usher, would you please state your full name for the record.

A. I am Major General William R. Usher.

Q. General Usher, how long have you been in the Air Force approximately?

A. I have been in the Air Force about 26 years.

Q. General Usher, would you please briefly describe your educational background.

A. I am a graduate of Yale University with a degree in Economics, and I have a master's degree from Harvard University Graduate School of Business Administration.

And I am also a graduate of the Armed Forces Staff College.

Q. General Usher, if you would, please, for the court briefly describe what the mission of the Air Force is today.

A. The United States Air Force, of course, is an instrument of national security of our nation and is responsible for, in concert with the other military services, defending this nation against our enemies.

In short, that means conducting combat operations against an enemy.

Q. What goes into the makeup of a fighting force or a (p. 13) combat ready fighting force, in particular, the Air Force?

A. I think the essence of a successful combat force, of course, involves equipment sufficient to carry into battle to the enemy, weapons which are effective; but, most important, it involves people who are highly trained, motivated, disciplined, and molded into a fighting unit.

Q. General Usher, what part does teamwork play in the makeup of a combat ready fighting force?

A. Teamwork is certainly extremely important, indeed, in many respects, it is the cutting edge.

If I can use, for example, in Air Force combat operations, for instance, we are very much involved in maximizing the number of sorties that we get out of aircraft.

What we want to be able to do is to carry that fight to the enemy as much as we possibly can.

What we are much engaged in then is putting together a sort of a well-oiled machine of people, a team, if you will, when an aircraft lands from a mission, to immediately refuel it and so forth, rearm it, and get it on its way again.

That requires a very high degree of teamwork that has to be practiced a great deal in peacetime to meet needs in wartime.

Q. General Usher, what part does motivation play in the makeup of an effective combat ready fighting force?

A. Well, again, it is part of that cutting edge.

(p. 14) We are a volunteer force, and that is initial element, if you will, of motivation; and the people come into the air force voluntarily. And, of course, when they do so, they do agree to adhere to certain standards.

But to the point of motivation per se, we know that in combat operations that willingness to give the extra effort, the willingness to do that which is above and beyond, more often than not results in success in combat.

Q. General Usher, where does discipline come into play in the makeup of an effective fighting force?

A. Well, of course, combat inevitably involves people's lives; and both for commanders and subordinates, discipline is just absolutely essential because you are asking people to do things that may result in them being injured, them being wounded, and them losing their lives.

And you have to be sure again that this teamwork approach works, that it does not break down, that everybody knows their task, they carry it out in a truly obedient way, and according to the way they have been taught.

You must be able to rely on them. Otherwise, if you cannot, the combat effectiveness of the unit will break down and you are thereby endangering a lot more lives.

Q. General Usher, where does esprit de corps fit into the makeup of an effective combat ready fighting force?

A. Well, we know from experience that people who are (p. 15) proud of their organization, who are not only caused to subordinate their personal interests to the purposes and mission of the organization, but do so willingly and do so as a voluntary matter that they want to serve the purposes of the mission and are proud to do that, then we know we have a more effective fighting unit.

Q. General Usher, what part does image play in the preparation and readiness of a combat ready fighting force?

A. Well, of course, we are a public institution; and all of our members, because we are a uniformed service and people anywhere they go—around here or anyplace—we represent the United States Air Force.

And we represent the United States Government, its officers and men of a uniformed service.

Now, we are in the business, of course, of recruiting people from the American public. We are in the process of gaining public support for the kinds of things that we do in peacetime and then in wartime. And we are in the business of trying to retain those people in our military service after we have invested great amounts of money in training them and so forth.

So when people look at us, they think, "well, there is an example of who is in the Air Force or the Army or the Navy and what have you."

And so our public image is very important to sustaining the United States Air Force as a force, as attracting good (p. 16) people, retaining good people, and thereby having top quality people who are proud of their organization and so forth that they will be a more effective fighting force than if we were less than that.

Q. General Usher, are you familiar, in general, with the requirements of Air Force Regulation 35-10?

A. Yes, I am.

Q. Would you briefly describe what the regulation requires.

A. The regulation is many pages long. It sets up in quite extensive detail what the requirements are for the

wearer of the uniform, men and women in the active and reserve forces of the United States Air Force.

And it states as its purpose that, of course, we are a uniformed force; and as I have just outlined, that pride and esprit and discipline and that sort of thing is important, and it is manifested in the wearer of the uniform.

Again, it portrays the subordination of personal interests to the purpose of the organization, which is essential for an effective military force.

Q. General Usher, are there exceptions to the requirements, dress and appearance requirements, of AFR 35-10?

A. Yes, there are a few.

First of all, for instance, if an individual were to be injured or wounded in combat or something like that, (p. 17) of course, a person would necessarily, because they did not have an alternative, would have to depart from a strict reading of Air Force Regulation 35-10 with respect to the wearer of the uniform.

Q. Could you give an example, General Usher?

A. Well, let us say that somebody was wounded in his arm or something like that, and it required him to wear a sling, Air Force Regulation 35-10, in general, does not call for exceptions. The general rule is that you will adhere to the regulation, for instance, that only authorized combinations are allowed to be worn.

You will not wear items that are not called for in the regulations; and that people, while they are on duty, in fact, will adhere to the stipulations that are in the regulations.

On the other hand, if you had somebody who was wounded in the arm and he had to wear a sling, obviously, that sling is not part of the uniform; it is not technically allowed in 35-10; but on the other hand, really, the individual would have no choice.

And, furthermore, we would want him to do that because we would like to get—let us say, it is his left arm and he is right-handed, and he might be able to do some limited amount of work by writing and so forth, even though he would be restricted perhaps in some other activities.

(p. 18) In other words, we could get some useful service out of him, which would be important particularly in a wartime situation, whereas he is not strictly following 35-10.

Q. That is a general exception that you just discussed that would apply also in peacetime, would it not?

A. It would.

Q. General Usher, are there any religious exceptions to the requirements of 35-10?

A. There is one exception in 35-10. This is as it is stated: It says when somebody is participating in a religious service, that the chaplain in charge of that service may specify the headgear to be worn by individuals while they are participating in that religious service. But it is limited to that.

Q. Are there other religious exceptions, General Usher?

A. No, sir, there are not.

Q. General Usher, what part do the dress and appearance standards of the regulation play in the discipline of a combat ready fighting force?

A. Well, again, I would like to go back to what I said earlier.

When people come into the Air Force, they do so voluntarily. The military is different from the rest of society. We do, when we come in voluntarily, agree to take on certain obligations and we agree to give up certain rights with respect to complete freedom of speech and so forth.

(p. 19) And we do this because, again, we know that to be successful in combat—that is their only real purpose for being in existence—it is necessary to subordinate the personal tastes and interests to the purpose of the organization.

And while one of the most effective ways we have found throughout history and it has been confirmed in combat is that you put people in the same uniform; you standardize; you require them to be part of that organization, be part of that team which has been designed and put together as an effective combat unit.

Q. What happens to discipline when you depart from those uniform standards?

A. Well, when you depart from that, [illegible] start an erosion process.

For instance, if we have in a particular case—here, we have an officer who is not following the regulation; and we have some evidence to indicate that NCO's on the same base felt that that or believed that that eroded their author-

ity to enforce other regulations upon their subordinates and so forth.

Now, it sets a bad example. It is a departure from the standards and norms that are expected.

Now, from a subordinate's standpoint, what you typically hear—in cases that I have been familiar with over my career—is to say, "why are you giving me an Article 15 because I was 15 minutes late to work when so-and-so, you know, is not (p. 20) even wearing the uniform properly?" or "he is not doing that."

You have to have consistency and fairness in order to insure discipline across the board. If you do not have that, discipline begins to break down.

And as I pointed out earlier, discipline is just absolutely essential to success in combat. You cannot have people deciding whether they want to carry out an order under fire or not; otherwise, you would place great numbers of people and their lives in jeopardy.

Q. General Usher, what part do the standards of AFR 35-10 play in the motivation of an effective combat ready fighting force?

A. I think primarily the medium of pride. And we have, I think, an attractive and distinctive uniform. We have tried to keep it plain and simple and so forth over the years.

I think it is recognized by the public and by people of other countries because of humanitarian missions and things that we carry out as a symbol of what is good and just and so forth in the United States.

And we try to pass that tradition, that feeling, on to the individual.

And, therefore, you cannot have somebody deciding that he wants to wear the uniform or parts of it this way or add this to it or take that away from it. You need that (p. 21) standardization in order to engender that pride; and that pride, in turn, engenders motivation.

Q. General Usher, what part do the standards of AFR 35-10, being the uniform dress and appearance standards, play in your teamwork in the makeup of a combat ready righting force?

A. Well, if I can again use the example of the returning airplane. One of the key elements of that is the weapons-loading crew, for instance; and we are talking about fatigues or field uniform.

But they all know that they are part of that team, and they all have the same uniform distinguished by rank, and they know who is in charge; they know who is subordinate.

They know their relationship; they know what they have to do.

They are trained together, and that uniform just helps with that standardization and it helps build that unit's prestige.

Q. In that regard, your flight line, I guess, that you are talking about—is there a safety aspect involved?

A. There is very definitely; and, in fact, that is covered in Air Force Regulation 35-10.

Again, the necessity for standardization comes in here. If an individual is wearing extraneous things of one kind

or another, there is both a safety consideration and there is a monetary consideration.

(p. 22) For instance, let us say we will not let people wear caps of any kind on a flight line or anywhere near a jet engine.

Q. Why is that?

A. Well, for instance, if it were injected into the engine, a couple of things could happen: First of all, an F-15 AF engine costs well over a million dollars a copy and it could absolutely destroy an engine. That is the first thing.

The second thing is there is the possibility the engine might blow up and cause injury or death to other people associated with it, maintaining or flying the aircraft.

So we have to be very, very careful that people adhere to our standards there from a safety standpoint.

Q. General Usher, what part do the standards of AFR 35-10 play in maintaining the Esprit De Corps in a combat ready fighting force?

A. Well, again, the tradition of the uniform is a long one with the Air Force. Since we have been in existence, we have had very, very minor alterations to the appearance of the uniform ever since we became an accepted service in 1947.

Of course, rank is very important to the hierarchial nature of a military force. Ribbons and combat decorations that our people wear are representative of their experience, their valor, their courage in battle, and so forth.

And all of these things are the marks of achievement in a military organization.

(p. 23) And another thing that is not a part of that, tends to depart from that, to divert from that. And it is recognized by an individual's peers, subordinates, superiors, by the public, by foreigners as being the epitome of people in the United States Air Force.

While that builds amongst members of the Air Force, as I say, pride, esprit, they recognize them as they are part of an organization which is well respected throughout this land and others. And they then take pride, and they want to be high performers, if you will, in that organization.

Q. General Usher, how does one person's departure from Uniform Dress and Appearance Standards, as mandated by Air Force Regulation 35-10, affect the ability of the Air Force to perform its mission?

A. I think—in the final analysis, I think it is a matter of where you draw the line.

We have set standards as the regulation itself points out. We have; we have set standards because everybody has personal standards and tastes and what have you, but being a public institution, we have to set those standards for all who are members.

So if one person departs from that, you are setting in motion a process where, if they are not brought back to that standard, you are then saying that you accept that.

And then others will come to you and say, "well, look, (p. 24) I have got a particular thing that I would like to do and why cannot I do that?"

So it begins to unravel; in other words, you cannot draw a line. You have to begin to accept other deviations,

if you will, from the established standard. And I do not know where it would end.

As I pointed out earlier, the other consideration is that, again, it influences discipline. Because then, if you allow this kind of a deviation on the part of an individual, particularly by an individual who is an officer and who is meant to be the epitome of a standard, the example, then it is very difficult then to enforce other kinds of standards or the dress standard itself on other people that are members of the Air Force by supervisors and commanders.

Q. Thank you, General Usher.

MR. LAWRENCE: I have no further questions at this time, Your Honor.

Cross-Examination

BY MR. LEWIN:

Q. General Usher, what is your specific position right now?

A. I am the Director of Personnel Plans at Headquarters, United States Air Force, in Washington, D. C.

Q. So you are located here at the Pentagon in Washington?

A. That is right.

(p. 25) Q. And have you been at any time in charge of March Air Force Base?

A. No, I have not.

Q. Have you been involved specifically with any decisions that the Air Force made concerning the case of Captain Goldman?

A. In the sense of being aware of the kind of the case and being aware of the contents and so forth.

As far as deciding if you are leading to whether we should settle the case out of court or in court, no, that was not my decision.

Q. In terms of command decisions, the whole question of how one deals with Captain Goldman's situation, was not, in fact, under your supervision in any way, was it?

A. No, not under my supervision and—no, it is not.

Q. And do you have any personal knowledge of the consequences of Captain Goldman's having worn his yarmulke while he was at March Air Force Base—personal knowledge?

A. Just from what I have read from the statements that have been brought before in court.

Q. So you are essentially testifying here regarding general desirability of Air Force regulations. Is that correct?

A. I am testifying here to what our regulations are and why they are the way they are, what the standards are.

Q. But with regard to this particular case, you (p. 26) understand, General Usher, do you not, that it involves the question of whether a particular member of the Orthodox Jewish faith in March Air Force Base should be permitted to wear a skullcap which he wears for religious reasons? Do you understand that that is the issue in this particular case?

THE COURT: Well, it may be.

But the reason we are having a trial, as I indicated to you at the outset of this litigation, is that without bringing this into a class action status, what goes for Goldman is going to go for all the other Orthodox Jews in the Air Force. . .

MR. LEWIN: Yes, Your Honor.

THE COURT: . . .For all practical purposes. There is a legal proposition.

Otherwise, we go on endlessly as the Goldmans in the Air Force, the Navy, and the Army choose to litigate this on an individual basis.

It was the Court's opinion that they should not have that burden, nor should the Department of Defense or any of the services have to bear that burden endlessly, especially in view of the fact that we are now going into draft registration where more and more people ultimately will be affected.

And I think it is the kind of situation that dissolves a finite resolution with all of the services, all of the prospective members of the Air Force, to know exactly where they stand vis-a-vis their alleged Constitutional rights.

(p. 27) MR. LEWIN: Yes, Your Honor.

THE COURT: To me, that is an orderly way to resolve the issue.

So that, in a sense, we are concerned about Captain Goldman because it is his case that allows us to address this in an orderly fashion.

This is why there is no particular dispute as to what happened to him. That is why the government's admis-

sions, the Secretary of Defense's admissions, are as candid and as clear as they should be.

MR. LEWIN: Yes, Your Honor.

BY MR. LEWIN:

Q. Your testimony, General Usher, is directed, as my notes indicate, to various particular justifications for an Air Force dress code in general. Is that right?

A. That is correct.

Q. Now, are these specific items that you listed, which I think come down to discipline, teamwork, motivation, esprit de corps, and image—are they based on any specific study that the Air Force has made in this case?

A. Not to my knowledge.

And I would not think that a study would be required; I would think that experience in several wars would be adequate.

Q. And your conclusions in that regard, that you have testified to, are they based on any particular background in (p. 28) psychology, say?

THE COURT: Well, let me interject.

As I understood General Usher, these are not his personal conclusions. These are the conclusions of the United States Air Force, who General Usher represents.

So this does not get into situations of what General Usher's views are.

THE COURT: You are now speaking for the United States Air Force?

THE WITNESS: That is correct.

THE COURT: All right.

BY MR. LEWIN:

Q. In answer to His Honor's question, you said you are speaking for the Air Force. Are these particular items that you enumerated enumerated in some Air Force study based on, say, an expert evaluation of any kind of psychologists or any thing of that kind?

A. Not to my specific knowledge, although they may be.

I am sure the characteristics that I talked about are alluded to in probably numerous Air Force publications, you know, associated with an effective combat force.

Q. I understand.

But is it fair to say that the Air Force has not done any psychological study of the effects of any individuals' departure from the dress code?

(p. 29) A. Not to my knowledge.

Again, I think our experience has put us in good stead here so that we understand . . .

Q. All right.

You say "Not to your knowledge." You are the director of personnel plans. Is that right?

A. That is correct.

Q. So, essentially, it would be your function to be looking into questions—planning regarding personnel, manpower?

A. By all means.

Of course, we have limited resources; and there are certain things that you know that go on.

And, as I say, on the basis of experience—and I am not sure whether an empirical study would necessarily add to this question.

Q. Well, . . .

A. We know through the medium, for instance, if I can give you an example, through the medium of periodic operational readiness inspections in peacetime as well as actual combat experience, I think which many of us have including myself, I think we know beyond doubt what it takes to make an effective combat force.

Another thing comes to mind—and I do not know if it hits the point you are trying to make—but you may recall back in the early seventies where there were difficulties on (p. 30) board a couple of Navy ships.

A subsequent congressional investigation for one thing pointed out that discipline had lapsed below acceptable standards; and part of it was a general slovenliness and departures from Navy uniform regulations that they thought contributed to that.

So I think there is ample evidence to support my assertions with respect to the purpose of the service.

Q. But would you agree with me, General Usher, that with regard to the question of whether an exception to dress code requirements would affect military discipline, if that exception were based on religious needs, that there is really—there are really three separate questions: one is whether a dress code is required and is useful—

that is the first question, and that was the main question you were addressing your attention to. Is that correct?

A. That is correct.

Q. The second question would be whether an exception for a religiously-required form of dress would injure or harm discipline in any way.

That is a second separate question, is it not, rather, distinguished from the first?

A. Well, we do not—we are not attempting through our regulation or anything to abridge anybody's religious freedom.

Q. All right.

(p. 31) A. And we are not—we do not distinguish, in other words, between somebody who would do this for religious purposes or who would do it for any other purpose.

We are saying that, you know, that we have to set standards for various reasons that I have mentioned.

Q. All right.

A. And those standards are there, and we expect everybody who voluntarily—and everybody who is in the Air Force is there as a volunteer and always has been, by the way—that they will accept those standards.

Q. All right.

But you will agree with me, though, that it is possible to consider a subsidiary question of whether a religious exemption would interfere with military discipline? That that could be considered as a separate question—would you agree with that?

A. Again, I will not agree with the question as stated because I say that our position is that we do not make any exception on religious grounds. Of course, we do not distinguish between religious and other grounds.

Q. You do not distinguish between religious and non-religious grounds?

A. That is correct.

Q. All right.

And in that regard, in terms of your own function (p. 32) or any functions that you work on within the Air Force, have you considered the impact of the First Amendment to the United States Constitution in any way, the provision which requires that the United States guarantee the free exercise of religion?

A. Here, of course, we do not believe that our uniformed standards, in fact, abridge those rights in any way.

People are still free to practice their religion as they see fit. And I think, in fact, to get ahead of your point, I think there is a considerable expert opinion that says that, in fact, it is not necessary to wear the yarmulke to practice Orthodox Judaism during the time of employment.

Q. But you will agree that you are not an expert on that?

A. I am not an expert, but I have, in fact, read what others have said. And we have got a lot of Orthodox Jews in the Air Force who do not see any necessity of wearing the yarmulke while they are being employed by the Air Force.

Q. General Usher, with regard to the first question, the general need for the dress code, you say that experi-

ence in fighting wars has demonstrated that it is necessary to have a dress code. Is that correct?

A. Both in wartime primarily, as I mentioned, but also in peacetime as well.

Q. You are familiar with the fact that there have been very successful battles or wars fought by, indeed, United States troops or American troops when there was really no effective (p. 33) dress code?

A. That is correct. But I think also warfare has changed since then, too.

Q. But there was substantial . . .

A. Sure.

Q. . . . if one thinks specifically of the revolutionary forces, for example?

A. That is right.

Q. Would you agree with me that they had substantial esprit de corps?

A. I would.

Q. Would you agree with me that they had substantial motivation?

A. Most of the time.

Q. Would you agree with me that in terms of their image, so far as the Colonists were concerned, that their image was good?

A. In some respects, but let us deal with that for a moment.

Q. Fine.

A. In some respects, they did not have an alternative. There was not any money to buy uniforms or anything like that. We did not have a real independent United States of America.

We did not have worldwide responsibilities. We were not looked upon by people from other countries as a fighting (p. 34) force; we were looked upon as a revolutionary force, not defenders of freedom around the world.

I think the context is entirely different . . .

Q. Because we did not . . .

A. . . . from the present day.

Q. Because we did not have the funds to purchase uniforms?

A. That is one of the reasons, but I think the context is entirely different. I do not think your comparison is all that apropos.

Q. Well, in modern times, do you know of military forces which are effective even when they permit religious adherents to wear yarmulkes, for example?

A. I am sure there may well be.

Q. Like the Israeli Air Force. Do you know about the Israeli Air Force . . .

A. Well, the Israeli Air Force, that may well be; and perhaps you may find that there are other cases.

But we are dealing with an American fighting force, which I think—the Israeli Air Force, for example, is a unique and peculiar situation where you have basically a religious state. We do not have that here.

We have people from all religious beliefs, walks of life, and some with no religious beliefs that are members of our armed forces. I think we have to take that into account.

(p. 35) Again, we have to deal with that public image, the American public expectations of their fighting forces, which is essentially different.

Q. I understood you to testify, General Usher, that the key reason why an exception or a departure from AFR 35-10 would affect the Air Force, is that other people would view it as a violation of military discipline and it would be impossible to draw the line. Is that correct?

A. That is correct essentially.

Q. In fact, if there were an exception for religious-belief-motivated departures from Air Force code, Air Force dress code, then such departures would be authorized by the regulations, would they not?

A. Presumably.

Q. And, consequently, people who would wear clothing such as a yarmulke, which is a departure from the Air Force code pursuant to that exception, would not be violating the Air Force regulation. Is that right?

A. If specifically authorized, yes, sir.

Q. So in those circumstances, it would be clear to other personnel that those departures are not violations of discipline but are, in fact, permitted by the Air Force?

A. But it might be very difficult to explain that to people who hold different beliefs?

They might feel that, in fact, we were making an (p. 36) unique exception.

What would you say to somebody who said, "look, I have a religious belief where I have to wear a saffron "robe"? Would you go along with that?

Q. Have you, General Usher, in your—how many years?—is it 27 years in the Air Force?—encountered any Air Force enlisted man or commissioned officer who wishes to wear a saffron robe for religious reasons?

A. No, I have not, but I have heard of instances where people wanted to do other things with respect to what they could wear with their uniform.

Q. For religious reasons?

A. In some cases some of them espoused religious beliefs, you know, like wearing combs and things like that, saying that that is part of their religious belief.

I have not personally been involved in a case, but I have heard about an inference.

Q. All right.

Is there any other case that you know that you have been personally involved that has involved a request to wear a different article of clothing for religious reasons?

A. Not personally involved, no.

Q. And you say you have heard of other cases. What is the most extreme case you have heard of?

A. I think probably the most extreme case that I am (p. 37) aware of is the request by practicing members of the Sikh religion, for instance, to wear a beard, to wear a turban and so forth.

Q. Sikh? That is S-I-K-H?

A. That is correct.

Q. Are there any members of the Sikh religion, to your knowledge, in the Air Force?

A. Not to my knowledge.

Q. Have you ever heard of any members of the Sikh religion, to your knowledge, in the Air Force?

A. Not to my knowledge.

Q. Have you ever heard of any members of the Sikh religion being in the Air Force?

A. I have not learned it for a fact. It has been told to me that they are, but I do not know for a fact that they are.

Q. Are you familiar with the fact that the United States Army did for a substantial period of time permit members of the Sikh religion . . .

A. I am.

Q. . . . to wear a beard?

A. And also . . .

Q. And that the Air Force—or that the Army has recently repealed that exemption?

A. That is correct.

(p. 38) They rethought that proposition.

Q. I see.

A. And they decided to return to the standard essentially the same as our own.

Q. Do you know of any particular incidents in the Army's experience that has shown that applying that exemption has caused specific breaches of discipline or has undermined esprit de corps in any way?

A. I think you would have to talk to somebody from the Army. I am not familiar with that. I cannot speak for the Army in that regard.

Q. Well, you would agree, would you not, that personal tastes not based on religion can be distinguished from religious obligations or religious compulsions of some kind that someone feels?

A. No, I do not.

Q. You do not believe so?

A. No.

Q. You do not believe they can be distinguished?

A. Because you will find and I think you will probably hear of it later this morning about a survey that we did, that our chaplains did.

And in that, at least—I know I was surprised at all of the sects and denominations and so forth, the number—and some of them, I guess, to some people might be almost personal (p. 39) taste.

But I think human nature, being what it is, some people would be prone to say, "Well, this is really a matter of personal taste. I have my own personal religion. And I believe in it very strongly. And, therefore, my personal religion requires that I wear or do something that would be a departure from the uniform standards."

And I think we have to be able to deal with such a situation like that.

Let us say we do not make any exceptions under the regulations for—even though Orthodox Judaism is well recognized around the world, but there are sects that are much smaller and can even get down to one person.

Q. The Air Force does provide religious services, religious advisors for its personnel?

A. It does.

Q. And in that regard, it has chaplains?

A. It does.

Q. And provides religious services?

A. It does.

Q. At Air Force bases?

A. That is correct.

Q. Would you agree with me that that is a recognition of the fact that religion is distinguishable from just simply matters of personal taste?

(p. 40) A. No, again, I would not because, again, you know, we are constrained as to the number of resources that we have. I am sure that there are some sects or denominations that are, in fact, not represented in the United States Air Force Chaplains' Corps because there probably would not be enough individuals in the total Air Force to merit having chaplains in that denomination.

But I do not—so I do not agree with you that that necessarily is a conclusive criterion for deciding what is,

you know, a religious belief and what is not—what is a legitimate religious belief and what is not.

Q. Well, I am not asking you the difference between a legitimate religious belief and a non-legitimate religious belief.

I am asking you whether you would agree with me that the Air Force, indeed the United States, does recognize that religion or religious obligations are different simply for matters such as personal taste.

Indeed, it may be required to do so by the United States Constitution, but that is a matter for His Honor.

But I am asking you whether it is not a fact that the Air Force by providing religious services and religious chaplains recognizes that religion is a different status or different category from simply matters of personal taste.

A. Yes, I think under the way you put it there, I think, (p. 41) yes, we recognize that religion is something more than a matter of personal taste.

The point I am trying to make is that, in fact, trying to distinguish between personal taste and what I might consider personal taste; and to the individual that I am talking to, it might be a deeply-held religious belief; and we would be at an impasse, I guess, in deciding who was right.

So, hence, our regulation is formulated on the basis that we do not make exceptions for any belief.

Q. Do you think that it is important for the Air Force to teach its personnel as well respect for American traditions, such as freedom of religion?

A. Certainly.

Q. And if, in fact—and you would agree with me that the providing of the religious services educates Air Force personnel on the fact that there are within this country different religious faiths and people who are adherents to different religious beliefs?

A. Well, it does by example.

Well, of course, any individual's participation in any of the religious services is totally voluntary.

Q. I understand that.

A. That is not a requirement.

Q. But it is a part of Air Force tradition to demonstrate to its personnel that diversity of religious beliefs is (p. 42) tolerated?

A. By all means.

In our social assets dedication program, we point that out. We do the same thing for various ethnic groups and so forth.

Q. And, nonetheless, it is your testimony that if Air Force personnel were told that an individual wears a small skullcap because he is a member of the Orthodox Jewish faith, that would undermine discipline rather than foster respect for diversity of religious belief?

A. Yes, I believe it would run the risk of undermining discipline. It is not generally associated with Orthodox Judaism.

It is the fact that we are making an exception for one religion or for one, you know, it could be for one organization and it may not be a religious organization.

But if you make those kinds of exceptions, then you begin to erode the standards which you have accepted.

Because then other religious sects would be able to come to us and say, "how about us?"

And we would have to say, I would think, out of fairness, if we believed that your premise is a deeply-held belief and so forth, that I think we would have to accommodate that.

Q. And is that . . .

A. And I feel that if you go on, pretty soon we do not (p. 43) have a uniform service. We have people that are wearing all different kinds of things.

And I think then the purpose that we serve by being a uniform service with missions and goals and so forth are no longer served to the degree that they could otherwise be.

Q. As the Air Force's Director of Personnel Planning, could you tell us, General Usher, what the maximum number of people in the Air Force in your estimation are today who have some religious belief that would affect the clothing that they wear in violation of Air Force dress code?

A. No, I do not.

Q. Do you have any idea?

A. No, I do not because, you know, you are asking me an unknown unknown.

I think until some of those people came forward—I think we have done a survey as to what the various re-

ligious sects practiced in the country and so forth ask their members to do with regard to dress.

Now, which of those might choose to come forward, which would choose not—I just do not know. I mean you are asking me to speculate about something I have no way of giving you any useful answer.

Q. The numbers could be counted on the fingers of one hand? You do not know?

A. No, I doubt that it could be limited to that.

(p. 44) Q. On what basis? On what basis do you doubt that?

A. Well, just because the survey showed we are talking about 60 to 100 or so sects; we are talking about, oh, perhaps—I am not sure I can recall the figures accurately; but there are a dozen or so specific dress requirements. And I would expect some percentage of those to come forward, and I would expect that some percentage—they represent some percentage of the Air Force who are adherents to that sect.

Q. So your conclusions in that regard are based on that survey that Chaplain Reeves, is it, will testify about?

A. That is right.

That is one of the inputs that has to do . . .

Q. Are there any other bases for that conclusion that there will be other people who will come forward in substantial numbers and . . .

A. Well, as I understand it from the Army, in the case of the Sikhs, there were at least, I think, 12 or 15,

perhaps a little more than the fingers of one hand. That is correct.

Q. That there were 12 or 15 at one time?

A. That is correct, that is what I understand.

Q. And where did you get that information?

A. I just got that information from—some information that was passed to me by a member of my staff. That is all.

Q. And is it your testimony that granting exemptions, whether they be for a skullcap or a beard for religious reasons, (p. 45) would prevent the Air Force from defending the nation against its enemies.

A. I am not saying that it prevents the Air Force from defending the nation against its enemies.

What I am saying is that . . .

Q. I do not think you have to repeat your testimony. I am just asking you in terms of the conclusion.

A. My conclusion is that you do not do as effective job at it . . .

Q. I see.

A. . . . By allowing an erosion of the standards that you set.

Q. It is somewhat less effective?

A. That is correct.

Q. But just to go back just to one point, you have agreed, I think, that there have been instances in our past where American fighting forces did very well even with

totally diverse uniforms without even limited to religious exemption?

A. But in a situation that is not very relevant to fighting warfare in the modern context.

Q. Well, would it surprise you to learn that George Washington himself agreed that it would be an effective fighting force simply to wear Indian outfits?

A. That would not surprise me.

Q. It would not surprise you.

(p. 46) So it is . . .

A. Again, I say the context is considerably different than in a modern-day situation where we have a peacetime armed forces in the United States of over 2.2 million, which is, of course, as I think if my memory serves me correctly, more than the entire population of the United States at that time.

Q. How many people are there in the Air Force? What is the total number?

A. Approximately 560,000 people.

Q. There have been personnel in the Air Force who have worn a yarmulke. Is that right? Captain Goldman and I think someone else is mentioned in your answers to interrogatories.

A. There may be others, yes.

Q. Do you know of any incident where that in some way led to a breakdown of morale or discipline?

A. I do not think that is the point I am making.

The point that I am making is that if you allow this example to stand up, you then begin to have to allow other examples.

Or, you get into the situation where people point out to you, "There is somebody violating the regulation. Why do I have to adhere to that regulation or to another regulation?"

Q. It is undisputed, and the government has conceded, that for three and a half years Captain Goldman wore his (p. 47) yarmulke at March Air Force Base.

And I ask you, General Usher, whether during that three and a half year period were you here at the Pentagon?

A. I was here part of the time.

Q. Were you in your present position?

A. Part of the time, yes.

Q. Would you, in that position—did you, in that position, at any time hear of a single individual who had requested, based on Captain Goldman's wearing his yarmulke, permission to wear some religiously-motivated garb?

A. No, I did not have an occasion before me during that period of time.

Q. And, to your knowledge, did any case come before anyone else in the Pentagon based on his wearing his yarmulke for three and half years?

A. I cannot speak for the chaplains. They may have, but not to my particular knowledge.

Again, my point is that we have people who do not follow our regulations. That does not legitimatize what

they do just simply because they did not adhere to the regulation for a period of time.

I think that we feel as soon as we discover a situation, we need to correct it. And I think that is what I hope and that is what was attempted to be done here.

Q. But you were not consulted before Captain Goldman (p. 48) was told to remove the yarmulke?

A. No, I was not consulted. I became aware, I think, of the case in the May time period or so and knew that he had been directed to do it. But I did not get involved in that decision at all.

Q. And did you know that prior to that time, he had been permitted to wear his yarmulke? Were you consulted in that regard?

A. No, I was not.

[Messrs. Lewin and Butler confer.]

BY MR. LEWIN:

Q. You are familiar, General Usher, are you not, with the related issue as to whether the wearing of the beard is a violation of the Air Force dress code?

A. I am.

Q. And were you familiar with the litigation which took place in this court with regard to two chaplains who litigated, Jewish chaplains who litigated the question of whether they would be permitted to wear a beard?

A. I am familiar with it in the general sense of the word, yes.

Q. Were you familiar with it at the time of the litigation?

A. In part, yes. Again, in a personal way, no.

Q. At those times as well, the very same kinds of (p. 49) predictions that you are making now were made with regard to the wearing of the beard, were they not, by the Air Force?

A. I think they were. I read some of the affidavits that were referenced, and there were similar arguments made, yes.

Q. That there would be no way to draw the line?

A. Yes.

Q. And that there would be other people that would wear other religiously-motivated garments?

A. Uh-huh.

Q. In fact, the two chaplains, Rabbi Geller and Rabbi Kalinsky, were ultimately permitted after litigation to wear their beards. Is that correct?

A. That was part of the consequence of litigation.

Q. Have you heard either personally or second-hand of any deleterious consequences to the Air Force as a result of those chaplains wearing beards?

A. No, I have not.

THE COURT: Of course, the Air Force has a ready answer when somebody asks why. They put the blame or the responsibility on the court because that is where the Air Force has left it. Is not that your position?

THE WITNESS: That is correct.

THE COURT: "If the court says so, we cannot do anything about it. Our position has not changed."

(p. 50) THE WITNESS: Our position has not changed and will not change.

BY MR. LEWIN:

Q. Well, of course, in the second case, General Usher, if you are familiar with it, the Kalinsky case, there was not a court order, was there?

A. I just—I really do not recall at this point in time.

Q. Well, if I can just refresh . . .

THE COURT: Has that case been terminated, counsel?

MR. LEWIN: That case was terminated by the Air Force agreeing that it would permit Rabbi Kalinsky to wear his beard prior to any court determination; so the case is mooted out.

THE WITNESS: That is correct. I recall that.

BY MR. LEWIN:

Q. You recall that.

So it was not really under court order that the Air Force . . .

A. No, it was based on the precedent that had been established in the Geller case in order that we could sustain our position in the Kalinsky case, if I recall correctly.

And, therefore, I think the judge is correct in this case that we have not changed our position as to the desirability of that; and, furthermore, of course, as you know, these two are in the reserve forces. They are not like this current case in that they . . .

(p. 51) Q. Pardon? I am sorry. I did not hear that.

A. I say these people went on to an inactive reserve status, as I recall, the Kalinsky and Geller situations.

Again, my recollection of the details is somewhat hazy.

THE COURT: Well, as a policy matter, you decided to lose the battle and win the war.

THE WITNESS: I think that is fair.

THE COURT: Yes.

BY MR. LEWIN:

Q. But with regard to the consequences, though, you would agree with me that there were no harmful consequences to the Air Force that grew out of the fact that Rabbi Geller and Rabbi Kalinsky wore their beards?

A. That is not to my knowledge.

Q. That is not to your knowledge.

A. I cannot comment on what the morale and discipline of the units with which they were associated is today.

I have not asked them; and, indeed, nobody has reported to me.

Q. Nobody has initiated any report to you to complain about the morale . . .

A. No, they have not.

Q. . . . or discipline of that unit?

A. No, but again I think the point holds that there is (p. 52) that ready explanation that we ended up in court on their matters.

MR. LEWIN: One moment, Your Honor?

THE COURT: Surely.

[Messrs. Lewin and Butler confer.]

MR. LEWIN: That is all, Your Honor.

THE COURT: Do you have any redirect, Mr. Lawrence?

MR. LAWRENCE: We have no redirect, Your Honor.

May General Usher be excused?

THE COURT: You certainly may be excused, General. You may step down and be excused.

[The witness leaves the stand.]

THE COURT: I think it might be appropriate for us to take a short recess at this point. We will resume at 11:00 o'clock.

[Thereupon, the court recessed at 10:50 A.M.]

[Following the mid-morning recess, the court reconvened at 11:06 A.M.]

MR. LAWRENCE: The defendants call Chaplain Reeves to the stand.

Thereupon,

Capt. Donald L. Reeves, Chaplain, USAF, called as a witness by the defendants, after first being duly sworn, was examined and testified as follows

Direct Examination

BY MR. LAWRENCE:

(p. 53) Q. Chaplain Reeves, would you please state your full name for the record.

A. Donald L. Reeves.

Q. What is your current grade?

A. Grade is 03—Captain.

Q. Would you please briefly describe your educational background, Captain Reeves.

A. Okay.

I have a B.A. in English, double major, English and Bible, from Bethel College in Tennessee; a Master of Divinity Degree from Vanderbilt Divinity School with graduate work in Management, Vanderbilt Graduate School of Management.

Q. What are your postgraduate degrees?

A. Just the Master's of Divinity Degree.

Q. What is your professional background, Chaplain Reeves?

A. I have been a pastor, teacher, and a writer.

Q. Would you give us briefly what period of time you were a teacher.

A. I was a teacher for two years, one year 1963—'62 to '63 — I taught senior English at Mount Juliet High School out of Nashville, Tennessee.

And in '67-'68, I taught senior English at Sparta High County High School in Tennessee.

Q. And?

A. I taught two summers at Peabody College, Administration (p. 54) High School.

Q. What did you teach at Peabody High School?

A. I taught senior English.

Q. And after you completed that aspect of your professional career, what came next?

A. Well, I am a pastor or was a pastor. I was on the staff as an associate pastor of the First Presbyterian Church in Nashville, Tennessee.

And I moved from there to senior pastor of a church in Jackson, Tennessee.

I was a psychiatric chaplain for the Tennessee Department of Mental Health for two years and then was a presbyterial executive for the presbytery of Murfreesboro, Cumberland Presbyterian Church.

Q. You indicated, I believe, that you considered yourself a writer. Have you had any publications?

A. Yes.

Q. Could you describe some of your publications for us.

A. I have had a feature article for the *Nashville Tennessean;* I have written curriculum material for adults, teenagers, and children for United Methodist Publishing House; and I currently have a column in my denominational magazine and have written articles for them down through the years.

Q. Going back to your articles briefly, what was your article in the *Nashville Tennessean*?

(p. 55) A. It was on the intimidating atmosphere of the average courtroom.

THE COURT: Do you want to revise it now that you know. . .

THE WITNESS: No, not yet.

And the discouraging effect that has on the average citizen trying to exercise his legal rights.

BY MR. LAWRENCE:

Q. What was the nature of your publications for the United Methodist Publishing House?

A. Adult curriculum materials on the use of silence in *The Adult Leader,* which is for teachers and adults; and then full spectrum of material for children and some summer programs for working with youth.

Q. What is your feature column that you write?

A. It is entitled "Letter to the Lord." It is often a very satirical column in which the kind of human aspects of life is lifted up in a satirical way as a letter to God.

Q. Where are you currently assigned, Chaplain Reeves?

A. Maxwell Air Force Base, and I am with the Chaplain's Resource Board, which works for the Chief of Chaplains.

Q. What are your responsibilities in your current position?

A. I am a resource person in the area of pastoral care and also in the area of theology for ministry.

(p. 56) And I also am one of the chief writers for the board and researcher for the board. I edit the monthly newsletter for the chief of chaplains, which is his official publication.

Q. In your current position, have you undertaken any research on the dress and appearance requirements of various religions or sects?

A. Yes, essentially the research that was done the 28th and 29th of August relative to the code of dress and uniform requirements.

Q. What form did the result of that research take?

A. It took the form of an outline that outlines the dress and uniform requirements for quite a diversity of groups, denominations, in the religious structure of the U. S.

MR. LAWRENCE: Would the clerk please mark this as defendants' exhibit 1 for identification.

MR. LAWRENCE: Let the record reflect I am providing a copy to plaintiff's counsel.

THE DEPUTY CLERK: Defendants' exhibit number 1 marked for identification.

[A document referred to was marked for identification as defendants' exhibit No. 1.]

MR. LAWRENCE: I have a separate copy for the court, for the convenience of the court.

[A copy of the exhibit is also handed to the court.]

(p. 57) MR. LAWRENCE: Your Honor, may I approach the witness?

THE COURT: Surely.

[Mr. Lawrence approaches the witness.]

BY MR. LAWRENCE:

Q. Chaplain Reeves, I show you what has been marked as Defendants' Exhibit 1 for identification and ask if you recognize that document.

[The exhibit is handed to the witness, who looks at it.]

THE WITNESS: Yes, sir.

BY MR. LAWRENCE:

Q. What is that document?

A. That is the compilation of the research that I did relative to the dress and uniform requirements.

Q. Chaplain Reeves, I would ask you to turn in defendants' exhibit 1 to the heading of "Indian Heritage Groups."

A. (Complying) Okay.

Q. What are the dress or appearance requirements for the International Society for Krishna Consciousness?

A. They are one of the groups that has the requirement of the maintaining of hair as it. They require a tuft

of hair, which is called a "Sikh," which is worn by the males.

They have clay markings which are distinctive, the most distinctive of which are two parallel white lines that run from the forehead down to the bridge of the nose.

(p. 58) Q. Further in that same category, "Indian Heritage Groups," what would be the dress or appearance requirement for the Satchidananda Ashram-Integral Yoga group?

A. The monks in that particular group of the "Indian Heritage" section would have to wear the saffron robe; other members simply wear white clothing.

I noted in research that I did that as to whether or not these are optional for military service, it is not listed. However, military service is allowed by the denominational standards.

Q. If you would turn in Defendants' Exhibit 1 to the "Islamic Groups," what would be the special dress requirements of the World Community of Islam?

A. (Complying) The males are not allowed to wear clothes that show the imprint of the body at all; the females show only the face, the hands, or below the ankles.

Q. Would the adherents of that religion be permitted to wear the current Air Force uniform?

A. I would presume not.

Q. If you would turn to the category of "Sikh" on Defendants' Exhibit 1, what are the dress and appearance requirements of the groups "Healthy, Happy, Holy" and "Sikh Dharma"?

A. (Complying) Okay.

Those are the same. Those who are practicing members of those groups must keep their hair, all of their hair, (p. 59) including their beards.

The hair is turban-tied on top of their heads. They have a very unusual requirement in that besides the special underclothing they wear, they also have a steel bracelet and a dagger.

The official clergy of that particular group wears jodhpur-like pants.

MR. LAWRENCE: Your Honor, I have nothing further of this witness.

I move the admission of Defendants' Exhibit 1 for identification into evidence.

MR. LEWIN: Your Honor, this is not an objection.

Obviously, this is not a jury trial, and I would like to cross-examine the witness on that document.

THE COURT: I will reserve ruling until you complete your cross-examination.

MR. LAWRENCE: Certainly.

MR. LEWIN: Thank you, Your Honor.

Cross-Examination

BY MR. LEWIN:

Q. Chaplain Reeves, in your education, did you take any courses in comparative religion?

A. Yes, sir.

Q. How extensive was that?

A. If I remember correctly, I had about nine semester (p. 60) hours, perhaps twelve; and I just frankly cannot remember the exact number. It has been a long time ago.

Q. Did those—did the subject matter in those courses cover any of the groups that are listed here under "Sikh Groups," for example, that you testified about?

A. (No response)

Q. Specifically, the "Healthy, Happy, Holy" organization?

A. I do not remember that it did, no.

Q. The International Society for Krishna Consciousness?

A. I remember some study of that. I could not tell you a detail.

Q. In your experience subsequent to your education, were you personally involved in any way in comparative religion study of any kind?

A. No, sir.

Q. You were essentially a pastor for the Presbyterian Church during that period of time that you were in the clergy following. . .

A. Yes, and the Psychiatric Hospital Chaplaincy.

Q. All right.

And this particular study, which is Defendants' Exhibit Number 1, you say was done August 28th and 29th of this year?

A. Yes, sir, that is a Friday and Saturday a couple of weeks ago.

Q. And that was done for purposes of this case. Is that (p. 61) right?

A. Yes, sir.

Q. And I notice on the front page of that, it says, "Contractor for this research was Kirschner Associates, Inc."

Who was Kirschner Associates, Inc.?

A. I have no idea.

They were listed as the contractor by the Army in the pamphlet, which was the basic guide that we used.

Q. I see.

So that is the contract before that, that pamphlet, No. 165-13?

A. That is my presumption.

The Army decided to do the study. As I understand the process, they contracted out certain portions of the study. Kirschner Associates had the sub-contract—or rather had the contract; and then even themselves sub-contracted some work out.

Q. But the particular information that appears on the succeeding pages was all information that you personally accumulated?

A. The particular information was within the posed pamphlet of the Army, with footnotes accordingly.

And I took that pamphlet as well as looking at the bibliography and put it in outline form, particularly related to dress and uniform codes.

(p. 62) Q. What made you select particular denominations or groups for that study?

A. They are the ones that are covered in the pamphlet.

Q. I notice the study begins with "Christian Heritage Groups."

A. Right.

Q. What are the heritage groups?

A. Evidently, the original contractor, when they did the study and perhaps in accordance with the Army's request—I am not sure about that—but, at least, the contractor and those who sub-contracted for the sake of order, divided their material of their concern into these groups.

They called them "Christian Heritage Groups"; and they would be, for instance, those groups that had in their heritage particular relationship with the Christian faith.

Q. Well, I notice that the study excludes, for example, your own, the Presbyterian Church.

A. That is right.

Q. And you have got no listing anyplace in these pages for the Presbyterians.

A. That is true. That is true.

Q. The study excludes the Roman Catholic Church, does it not?

A. That is true.

Q. It excludes all Baptist groups, does it not?

(p. 63) A. That is true.

Q. So, essentially, what you were doing in this study is simply taking a whole group of very small minority sects. Is that right?

A. I am not sure.

The Army are the ones who set up that, and we simply followed their lead. I am not sure what their purpose was for excluding the major mainline groups.

Q. But you would agree with me that the major mainline groups are excluded?

A. Yes, they are not—I do not think the intent was to even study them.

Q. And those major mainline groups are the major groups that are represented in the Air Force. Is that not right?

A. I would presume that. I do not have statistics to back that.

Q. Well, the work you do now is sort of with the Central Office of Chaplains for the Air Force?

A. That is right.

Q. And is it fair to say, then, that as, for example, the World Almanac indicates, that the largest churches in the United States are the Roman Catholic Church, the Baptist Church, the Lutheran Church, various Methodist Churches, Presbyterian Churches, the Episcopal Church—those churches are not in the study?

(p. 64) A. That is true.

And there are some minority churches that are not, too. Your Orthodox, your barest breakdowns—we have—in fact, I am a member of a very small Presbyterian body within the Presbyterian group.

So I would say that it was not an exclusion made simply on the basis of major or minor necessarily.

Q. I see.

But the major churches I have listed have no clothing requirement, nothing that would affect their dress or uniform in any way?

A. That is true.

Q. And would you say—do you have any idea, just in terms of approximation, as to the percentage of Air Force personnel that belong to the major churches that have no religious. . .

A. No, sir, I do not. I do not have any statistical idea.

Q. Would you agree with me that that is in excess of 90 percent?

A. I just have no idea.

Q. Well, would you have any reason for believing that it is any different in its general proportions than the population at large than those that belong to the population. . .

A. No, I could not. I would have no reason to.

Q. Now, with regard to the items that are on the chart, (p. 65) did you say you made inquiries yourself?

A. In terms of looking at printed material?

Q. Printed material.

A. I looked at all of the materials that are in the bibliography, which were listed in the bibliography of the Army pamphlet, in addition to a couple of resources that were not in it, which are on your bibliography.

On the bibliography that you have, there are two books I have not seen—one entitled *Dread,* by Joseph Owens, the other, *The Rastafarians*—simply because those were printing material that the original contract group utilized in getting their information about the Rastafarian group. And I was unable to find that.

The others I looked at.

Q. The. . .

A. I am sorry. There is one other one.

Q. Yes.

A. Okay.

I have not specifically looked at *The Jewish Catalogue.*

Q. You did not see *The Jewish Catalogue?*

A. That is right.

Q. Did you see the other book?

A. *We Jews,* yes.

Q. And could you describe that book?

(p. 66) THE REPORTER: What was that?

THE WITNESS: *We Jews,* by Efraim Rosenzweig.

THE WITNESS: This is a book that is a summary by a Rabbi, if I recollect, of the Jewish faith and has been, in fact—I think all of our Chaplains have this book. It has been utilized as a book of familiarization for the Chaplain force with the Jewish faith.

BY MR. LEWIN:

Q. I notice that book is not listed under either Conservative Judaism or Reform Jews in your other printed information.

A. That is true.

That book was not utilized by the study.

Q. Now, there is another column headed "Original Source of Information."

A. Yes, Sir.

Q. Did you talk to people. Is that what that is?

A. No, this, "The Original Source of Information" column, is a listing of the original sources for the contract group.

They themselves got their information on not simply the dress and uniform requirements, but total descriptions of these groups from individuals' agencies.

And they listed those within the Army study. There is an Appendix that has them listed. It even has names and addresses.

Q. And as I understand it, the study of religious (p. 67) requirements and practices is not limited to the dress or uniform.

A. Oh, no, not at all.

Q. Well, just directing your attention to the page which contains the Jewish groups, . . .

A. All right.

Q. . . . Did you, in regard to studying the Jewish groups, seek in any way to find authority beyond *The Jewish Catalogue* or the book by Rabbi Rosenzweig that you list there?

A. Or the pamphlet itself?

Q. Or the pamphlet itself?

A. No, sir, no.

Q. And on what basis did you determine that the materials that you relied on were really the authoritative sources for the information that you were including in your study?

A. The extensiveness of the Army study itself and what I feel to be the trustworthiness of that implies its correctness.

And then the other books were the ones most available to us at the moment.

Q. You say you have not seen *The Jewish Catalogue*?

A. I have seen it, but I have not looked at it.

Q. You have seen it?

A. Yes, sir.

Q. It is really sort of a pamphlet, is it not? It is (p. 68) a soft cover, kind of a large popular book?

A. Uh-huh.

Q. It is not—would you call it an authoritative description of the religious practices?

A. I am not sure. I do not know what the purpose of it is.

Q. Did you study Judaism at all in comparative religion courses that you took, or are you familiar with Jewish practices?

A. Yes, to some degree, but I think simply in the way that you study all other religions that you study when you are in a seminar program.

Q. But are you. . .

A. I am not extremely—I would not consider myself an expert on the Jewish faith at all.

Q. You know, though, that there are authoritative codes of Jewish law?

A. Yes, sir.

Q. And you did not look at those?

A. I have seen the Jewish—let us see—*The Concise Code Of Jewish Law,* I believe, by Appel. I have seen that and looked at that.

Q. That is not part of the study?

A. No, no, sir. I did not see that until after the study was over.

[Messrs. Lewin and Butler confer.]

(p. 69) BY MR. LEWIN:

Q. You said the study was based, you indicated in part, on *The Jewish Catalogue.*

[The book is shown to the witness.]

BY MR. LEWIN:

Q. Do you recognize that, *The Jewish Catalogue*?

MR. LEWIN: Let me mark it for identification.

[The book referred to was marked for identification as Plaintiff's Exhibit No. 3.]

THE WITNESS: I am sorry.

Let me make sure that I understand you. I did not use the Catalogue in the study.

BY MR. LEWIN:

Q. But you did see the Catalogue?

A. I have seen the Catalogue, yes. I saw it after the study was completed.

Q. Well, just showing you Plaintiff's Exhibit Number 3 for identification, . . .

[The exhibit is shown to the witness, who looks at it.]

BY MR. LEWIN:

Q. . . . Would you agree with me that that is sort of a popular summary of various kinds of Jewish practices, customs?

A. I would presume it to be so, looking at the publisher (p. 70) and the table of contents.

Q. Would you consider that an appropriate basis for a scholarly conclusion to be drawn regarding Jewish requirements of the Jewish faith?

A. I am not sure how to answer that. I would have to look at it, I think, in detail to make a decision on that.

Q. Let me show you what I would mark as Plaintiff's Exhibit 4 for identification.

[Another book referred to was marked for identification as Plaintiff's Exhibit No. 4.]

BY MR. LEWIN:

Q. This is a volume called *Code Of Jewish Law,* in English.

[The exhibit is handed to the witness, who looks at it.]

BY MR. LEWIN:

Q. Have you ever seen that?

A. Yes, sir, I—now, I presume that this is the one that I have seen.

Q. I do not believe it is.

A. It is not?

Q. No.

A. This is not *The Concise Code* by Appel. Okay. No, I have not seen this.

(p. 71) Q. Just from looking at it, does that appear to be a more detailed scholarly . . .

A. Certainly.

Q. . . . Exposition of Jewish law than what appears in Plaintiff's Exhibit 3 for identification?

A. Yes, I would presume that from taking a cursory look.

Q. Now, in studying Conservative Judaism, which is listed on that same page, did you have recourse to any scholarly works on Conservative Judaism?

A. No, sir, utilized the pamphlet on that.

Q. Well, let me show you what I will mark as Plaintiff's Exhibit 5 for identification.

[Another book referred to was marked for identification as Plaintiff's Exhibit No. 5.]

BY MR. LEWIN:

Q. This is a guide to what is called Jewish life?

[The exhibit is handed to the witness, who looks at it.]

BY MR. LEWIN:

Q. It is *Jewish Religious Practice—A Guide To Jewish Religious Practice,* by Rabbi Isaac Klein. Have you ever seen that document before?

A. No, sir.

Q. Just from the inside flyleaf, can you tell whether (p. 72) it is a survey of conservative Jewish practice?

A. I would presume that it is.

Q. And if I told you that in that Plaintiff's Exhibit 5 there is reference to practices of conservative Jews to wear a head covering at certain times when praying or when performing a ritual or when eating—specifically, I direct your attention to Pages 51 and 52 of that volume, bottom of 51 and top of 52.

A. (Looking for reference in book) All right.

Q. Is that right?

A. I'm sorry.

Repeat the question.

Q. Is there indication there or statement there by Rabbi Isaac Klein of the Jewish Theological Seminary that, in fact, Conservative Judaism does expect its adherents to cover their heads in for enumerated instances, including when performing a ritual or when eating?

A. Right.

MR. LEWIN: I would like to offer those pages of that volume in evidence, Your Honor.

We can mark that as Plaintiff's Exhibit 6 and offer that in evidence.

[Pages of Plaintiff's Exhibit No. 5 for identification were marked for identification as (p. 73) Plaintiff's Exhibit No. 6.]

THE COURT: Any objection, Mr. Lawrence?

MR. LAWRENCE: One brief moment, Your Honor?

THE COURT: Surely.

[Mr. Lawrence looks over the exhibit.]

MR. LAWRENCE: We have no objection.

THE COURT: All right.

It will be received.

[Plaintiff's Exhibit No. 6 for identification was received in evidence.]

BY MR. LEWIN:

Q. Would you agree with me, Chaplain Reeves, that this study is really a very—how shall I put it?—cursory kind of review of very selected religious denominations?

A. This study that the Army pamphlet did?

Q. Yes.

A. I cannot dispute that since I do not know the original process they went through.

Q. With regard to Conservative Judaism, it appears to be erroneous, does it not, when it says that there is no special dress uniform required?

A. Okay.

It is not in agreement with the statement that you have here. However, I am not sure whether—would you like for (p. 74) me to tell you where—how the Army pamphlet asked that question and how that came about?

Q. All right.

Please do.

A. In the Army pamphlet, each of the denominational groups was asked a series of specific questions, and there were proposed answers to that.

One of the questions was: "Are there specific requirements"—I am not quoting directing—but, "are there specific dress uniform requirements?"

The answer from the research they did, which was in this case, the original source being a member of the Rabbinical Assembly, was "none."

And I do not have any explanation of that, other than that is the—and that also, the "A" behind it, means that that is the final form of—that statement was approved by that member of the Rabbinical Assembly.

Q. So there was one person who was asked who was a member of the Rabbinical Assembly?

A. It listed that person. I am not sure whether there were others or not.

Q. Under Orthodox Judaism, your report says, "incomplete information."

A. That is right.

Q. Now, it says that "group worship is required."

(p. 75) Is that a special dress or uniform requirement?

A. You mean is special dress or uniform requirement made at worship?

Q. No, no.

I am asking you, as I understand your study was, to find out whether there was special dress or uniform requirements for each of the various faiths.

A. Right.

Q. You have a recitation under Orthodox Judaism, which continues for about twenty lines, . . .

A. Right.

Q. . . . Saying that group worship is "required."

"There are 'fixed times' for public worship, three times daily: Morning, afternoon, and evening."

A. Right.

Q. That is not a special dress or uniform requirement?

A. Right.

Simply when there was no information from Orthodox Judaism, I simply tried to point out what requirements there were relative to worship itself and the equipment necessary for it and the apparel for it.

Q. So that entire paragraph all deals with worship and not with any special dress or uniform requirements?

A. Simply, as I understand it, as it relates to worship, right.

(p. 76) Q. Indeed, on its face, that section with regard to Orthodox Judaism states that there is no requirement other than during worship that males wear—keep their heads covered.

A. Orthodox Judaism, the statement on Orthodox Judaism, did not answer the question in the Army Pamphlet regarding Dress and Uniform Codes one way or the other.

So it is just simply absent.

Q. You simply had no information?

A. I had no information about that.

Q. You had no information about that?

A. Right.

And this was gleaned from discussion of worship.

Q. With regard to these other groups, Chaplain Reeves, do you or does the underlying report have any in-

formation about whether there is any member whatever of any of the other groups in the Air Force?

A. I'm sorry. I do not understand your question.

Q. The other groups that are in your report, is there any information in the underlying Air Force Report as to whether there is any member of any of the other groups, apart from the Jewish group in the Air Force, in the military services?

A. Yes.

Q. First in the Air Force and then in the military.

Well, let us just go over it: The "International Christian Ministries," which is the first under "Christian (p. 77) Heritage Groups": They have no special dress requirements.

Do you know whether there are any . . .

A. I do not know. And that evidently is not the intent of the study, to determine who was or who was not.

Q. All right.

In fact, on the front page, the indication that you got is that there is none of those, even of those small groups, had any special dress or uniform requirement?

A. (No response)

Q. Is that right?

A. I do not understand your question.

Q. In fact, you found from your study, such as it was, that none of the . . .

A. Oh, you are talking about of the Berkeley Christian Coalition?

Q. Well, just down that entire first page.

A. (No response)

Q. None of them had any special dress requirements; so if they were in the Air Force, there would be no . . .

A. They would . . .

Q. . . . Requirements?

A. Except for the Holy Order of Mans. I would presume from the little information that was on them, there could be conflict there. But I do not know enough details. It is on the first page.

(p. 78) The others, no.

Q. And on the second page, there's none?

A. Right.

Q. And on the third page, the first one that you found is the Krishna group, the . . .

A. Yes.

Q. . . . Hare Krishna group?

A. That's true.

Q. And do you have knowledge of any member of the Hare Krishna group who is in the Air Force? Is there any Hare Krishna member in the Air Force?

A. I have no knowledge of that one way or the other.

Q. You are working at the Central Office for Air Force Chaplains? Is that what that is?

A. Well, I work at the Resource Board at Maxwell.

Q. Resource Board?

A. Right.

Q. And what is the Resource Board exactly?

A. It is a—it is simply what is says. It is a group of Chaplains who are resource people for the Chief of Chaplains in various areas, and we also do writing and research, not only relative to our areas, but to any other request.

Q. When you say "resource people," if there is a difficult problem of some kind, they would be likely to call upon you?

A. Yes, sir.

(p 79) Q. And would you consider it likely that if there were a Hare Krishna member someplace who made some religious request, that that would therefore come to your attention in the ordinary course?

A. It could and it could not.

We have not had that happen, and I really cannot answer from experience on that; and I have only been on the board since February, so I am not sure what the history is on that.

Q. Well, what has been—during your experience there, what has been the most unusual group that you have encountered in your experience?

A. You are talking about in my experience other than doing the research itself?

Q. Yes.

A. The only reference of a group that I have simply had mentioned is the Sikh group, who recently, I heard, asked for permission to pass out materials at a base event of some kind. But that is the only group that I have had any . . .

Q. It asked for permission to hand out materials? Now, this is a Sikh group of Air Force personnel, people who are in the Air Force?

A. The understanding that I had was it was an Air Force officer, in fact, who had asked . . .

Q. He was a member of the Sikh group and he had asked (p. 80) to hand out this material?

A. Or who asked for permission to use a—or to have a booth at some kind of event.

Q. Have you had any dress exception request from that member of the Sikh group?

A. No.

Q. Do you know of any . . .

A. Not that I know of, and I am not sure I would know.

Q. Do you know his name?

A. No, I do not. I don't have any idea.

Q. Where would that request have gone?

A. If it was a local request, it would have gone to the Base Commander.

Q. Do you know of any member of the Sannyas Order, S-A-N-N-Y-A-S, who is in the Air Force?

A. No, sir.

Q. Or any member of the Sri Chinmoy Centre?

A. No, sir.

Q. In fact, going through the rest of your study, leaving out for the time being the Jewish groups and the one member of the Sikhs whom you have described, do you know of anyone in the Air Force who is a member of any or adherent to any religious faith that requires some exception or variation from the Air Force dress code, according to your statement?

A. Not that I can think of, no, sir.

(p. 81) Q. Uh . . .

A. Let me say with the exception of the fact that we do have quite a few Mormons in what they are allowed to wear; but it is not an exception to the rule since they are undergarments.

Q. Well, now, what is the—what is the rule with regard to Mormons are permitted to wear?

A. The covenanted member of the Mormon faith has certain undergarments they can wear or, that is, garments that are worn under the uniform. They are allowed to do that. They are "temple garments," as they are called.

We have got quite a few Mormons, and I would just simply presume that they do wear theirs.

Q. Is that provided in AFR 35-10?

A. Not that I know of.

Q. So how has that exception been implemented?

A. I would presume that it is implemented by them in that it is not visible.

Q. AFR 35-10—are you familiar with AFR 35-10?

A. Generally, yes, sir.

Q. It is a fact, is it not, that AFR 35-10 also specifies undergarments as well as clothing that is worn outside?

A. Not that I am aware of.

Q. Well, let me show you paragraph 2-9 of AFR 35-10 and specifically sub-paragraph (F).

(p. 82) [The reference is shown to the witness to view.]

THE WITNESS: Yes, that speaks to the visibility.

BY MR. LEWIN:

Q. And it does specify that undergarments are to be a T-shirt . . .

A. . . . And undershorts.

Q. Now, you say Mormons are permitted to wear religious undergarments. And have you heard complaints from any enlisted personnel about the Mormons' wearing undergarments?

A. No, sir, and I do not know for a fact that any have. That is a presumption on my part.

Q. Do you think, Captain Reeves, that it is desirable that the Air Force promote recognition of diversity of religious faiths among its personnel?

A. (No response)

Q. In other words, that Air Force personnel know that we live in a country where there are various religious faiths?

A. I think we have accomplished that, yes, sir.

Q. Do you think that is a desirable objective in terms of what the Air Force should achieve with its personnel, should it not?

A. I am not sure—Excuse me—I think it is an assumed thing; and I am not sure that I think it would—I am not sure how to answer that really. I do not know that that is their major concern or should be their major desire.

(p. 83) But I would think it is very good that they allow pluralism.

Q. And do you think that pluralism is fostered by a recognition that other people have got religious observances and beliefs . . .

A. Yes, sure.

Q. . . . That the individual may not have; . . .

A. Yes.

Q. . . . That other people have got different religious observances and symbols?

A. Yes.

Q. And, specifically, do you think it is fostered by a recognition that other people may, for example, in the exercise of their religious belief wear some particular garment? They may wear a hat.

A. I would presume that that is one way of recognizing it.

Q. Do you think that interferes with military discipline if people respect that?

A. I do not have information to answer that on honestly. I am not sure.

I have not—I have not run into an occasion personally where there was an interference of any kind.

Q. Would you agree, Captain Reeves, that religious obligations or duties should be granted somewhat preferential (p. 84) treatment to simply personal—matters of personal taste?

MR. LAWRENCE: Your Honor, we have been patient.

I am going to object. This is significantly beyond the scope of the direct examination here.

MR. LEWIN: I am not going to go on with this at length, Your Honor, it just has to do with the testimony that was gotten from the first witness, and I am just . . .

THE COURT: Well, I do not think that Captain Reeves has been offered as any expert, and his personal opinion is not at all persuasive on this subject matter.

MR. LEWIN: I think he has. I think he has been offered as an expert because he made up a chart of the different religious faiths; and, certainly, in our view, . . .

THE COURT: Making up a chart does not make one an expert. He has testified within his experience. He has told us exactly what he did and where he got the information from.

They asked him to compile something that would make some sense out of a rather obtuse, abstruse area that they have had no major focus on. And the best he could do in the time that they gave him was to get that information and go through it and present it to us in outline form.

I would assume the defense would want to make the whole study available, the whole transcript.

MR. LAWRENCE: That is correct.

THE COURT: That is one of the things that was to (p. 85) be ascertained and what the Army had in mind when they commissioned it. They spent money on it; they had a contract.

They needed the contract to determine what it was the contractor said he was going to do for the Army. And it might give some indication as to what they expect to get out of it.

I am going to sustain the objection. I think you are too far afield.

BY MR. LEWIN:

Q. Chaplain Reeves, to your knowledge, has any military service done any study of the effects of permitting religious exemptions to dress codes on military discipline?

MR. LAWRENCE: Objection, Your Honor.

The same objection—it goes beyond the scope of direct examination.

MR. LEWIN: This might . . .

THE COURT: I am going to sustain it.

I have had it from the top man, and he does not know of any.

MR. LEWIN: Pardon?

THE COURT: He does not know of any.

MR. LEWIN: All right.

I just wanted to confirm that with this gentleman, who did go to the available resources.

THE COURT: No, I do not want to pull rank on the (p. 86) Captain; but when the General says there has not been any, that is enough.

[Messrs. Lewin and Butler Confer.]

MR. LEWIN: That is all.

MR. LAWRENCE: Your Honor, I have no further questions.

I would move the admission of Defendants' Exhibit Number 1 into evidence.

THE COURT: You may step down, Captain Reeves, and be excused, if you like.

THE WITNESS: Thank you, sir.

[The witness leaves the stand.]

THE COURT: What is your objection?

MR. LEWIN: Your Honor, I think I just simply raise the objections, and I guess they go to the weight of the report more than to its admissibility.

And, obviously, we think it is an inadequately-done job, but we cannot object to its being admitted.

THE COURT: Well, I am going to receive it over your objection.

[Defendants' Exhibit No. 1 for identification was received in evidence.]

MR. LAWRENCE: Your Honor, one final matter. The Air Force regulation at issue here is already a part of the (p. 87) record, and I have not offered it for that reason.

I have additional copies if they would be of any help.

THE COURT: I think it unnecessary to have additional copies. We have the record copy which is marked as your exhibit.

MR. LAWRENCE: Exhibit A, I believe, to the opposition to preliminary injunction.

THE COURT: It should be re-marked.

Why do not we have it re-marked for the purposes of this trial.

You can put an additional marker on it, I guess, which would be the easiest way to do it.

MR. LAWRENCE: That would be Defendants' Exhibit Number 2.

[The AFR referred to was re-marked for identification as Defendants' Exhibit No. 2 and received in evidence.]

MR. LAWRENCE: Your Honor, we have no further witnesses at this time, and the defense rests.

MR. BUTLER: Your Honor, maybe this might be an appropriate time to break for lunch. We have rebuttal witnesses that we would like to call.

We have been informed by the defendants that they will be . . .

(p. 88) THE COURT: I do not think that will be any problem.

Can we resume—what time have you told the witness you would be ready for him? Is 1:45 the time you . . .

MR. BUTLER: We can resume by 1:15 or 1:30, Your Honor.

THE COURT: Would you like to resume at 1:30 then?

MR. BUTLER: Yes, Your Honor.

MR. LAWRENCE: That is fine with us.

THE COURT: All right.

Let us resume at 1:30 then.

[Thereupon, the court recessed for lunch at 11:55 A.M.]

AFTERNOON SESSION

[1:47 P.M.]

MR. BUTLER: Good afternoon, Your Honor.

THE COURT: I apologize for keeping you waiting. I was delayed. I usually try not to waste busy lawyers' time.

You can proceed now.

MR. BUTLER: The plaintiff wishes to call as its first rebuttal witness Dr. Howard Rosman.

THE COURT: Very well.

Thereupon, Howard J. Rosman, M.D., called as a witness by the plaintiff, after first being duly sworn, was examined and testified as follows:

(p. 89) *Direct Examination*

BY MR. BUTLER:

Q. Dr. Rosman, would you please state your full name for the record.

A. Howard Joseph Rosman.

Q. Where do you live, Dr. Rosman?

A. 166S17 Seventy-Third Avenue, Flushing, New York.

Q. What is the nature of your current employment?

A. I am a pediatrician.

Q. How long have you been a pediatrician? How long have you specialized in that area of medicine?

A. Since 1971.

Q. Where did you attend medical school, Dr. Rosman?

A. New York University.

Q. And where did you perform your internship and your residency?

A. At Bellevue Hospital and NYU Medical Center.

Q. Both in New York?

A. Yes, they are adjoining.

Q. What was your next position after your residency?

A. I was on extended active duty in the Air Force.

Q. When did you begin your extended active duty with the Air Force?

A. July 1, 1974.

Q. Where were you assigned?

(p. 90) A. Pease Air Force Base, Portsmouth, New Hampshire.

Q. How long did you serve in the Air Force?

A. Two years.

Q. Did you serve in the Air Force as a doctor?

A. As a pediatrician, yes.

Q. I notice you are wearing a yarmulke, Dr. Rosman. Are you an Orthodox Jew?

A. I am.

Q. Have you always worn a yarmulke?

A. I have.

Q. Did you wear a yarmulke while you were attending medical school?

A. I did.

Q. Did you wear a yarmulke while you were in your internship and residency?

A. Yes.

Q. Did you wear a yarmulke when you reported for duty at Pease Air Force Base?

A. I did.

Q. When you first reported for duty at Pease Air Force Base wearing your yarmulke, did you receive any reaction or any comment from any of your superior officers?

A. The hospital administrator told me that I would not be permitted to wear the yarmulke while I was on active duty while in uniform.

(p. 91) Q. Who was the hospital administrator if you can remember?

A. Major Jonas.

THE REPORTER: Major who?

THE WITNESS: Jonas, J-O-N-A-S.

BY MR. BUTLER:

Q. What did you do when Major Jonas told you that you could not wear a yarmulke in uniform?

A. I told him then that it would go against my religious beliefs, and I would really like to work it out so that I would be able to wear the yarmulke while I was at the hospital on duty while in uniform.

Q. What did he say to you at that time?

MR. LAWRENCE: Objection, Your Honor.

We are getting into an awful lot of hearsay; and my objection is on the basis of hearsay.

THE COURT: I think I have to sustain it.

BY MR. BUTLER:

Q. What did you do after Major Jonas told you you could not wear your yarmulke while in uniform?

A. At that point in time, I requested—I formally requested to have a waiver of the regulation stating that I should not wear a yarmulke.

[Mr. Butler shows a document to Mr. Lawrence.]

BY MR. BUTLER:

(p. 92) Q. Dr. Rosman, I place before you what has been marked for identification as Plaintiff's Exhibit Number 7 and ask if you can identify that document.

[The Exhibit is handed to the witness, who looks at it.]

THE WITNESS: This is the waiver request that I sent in to my commanding officer.

[Mr. Butler shows another document to Mr. Lawrence.]

BY MR. BUTLER:

Q. In connection with your request for a waiver, did you consult with any other personnel at the Air Force Base?

A. I spoke with the Hospital Commander, Colonel Edmonds, and also with a Colonel Matthews, who was the Methodist Chaplain on base.

Q. Dr. Rosman, I place before you what has been marked for identification as Plaintiff's Exhibit 8 and ask if you can identify that document.

[The exhibit is handed to the witness, who looks at it.]

THE WITNESS: This is the letter that Colonel Edmonds wrote to the base commander recommending ap-

proval of my request for a waiver of the regulation prohibiting wearing the yarmulke.

BY MR. BUTLER:

Q. What was Colonel Edmonds' position at that time?

A. He was the Hospital Commander.

(p. 93) [Mr. Butler shows another document to Mr. Lawrence.]

BY MR. BUTLER:

Q. Did you receive any information or orders from your commander thereafter, after your request for an exemption and Colonel Edmonds' . . .

A. I spoke . . .

Q. . . . Endorsement of that request?

A. I spoke with Colonel Burpee on July 16th.

Colonel Burpee was the Base Commander.

And on, I think, July 22nd, I received a direct order from Colonel Burpee not to wear my yarmulke while performing my duties while in uniform.

Q. I place before you what has been marked for identification as Plaintiff's Exhibit Number 9 and ask if you can identify that.

[The exhibit is handed to the witness, who looks at it.]

THE WITNESS: This is the order that I received from Colonel Burpee.

BY MR. BUTLER:

Q. After you received . . .

MR. BUTLER: Excuse me.

May I move the admission of Plaintiff's Exhibits Numbers 7, 8, and 9?

MR. LAWRENCE: Your Honor, I would object again on (p. 94) the basis of hearsay.

Although those documents have been identified, they are still hearsay.

MR. BUTLER: With respect to Exhibit Number 7, Your Honor, it is a letter request and identified by the witness, submitted by the witness to the Air Force with his own signature on it.

These documents—perhaps I can ask the witness more questions as to whether he has . . .

BY MR. BUTLER:

Q. With respect to Plaintiff's Exhibit Number 8, Dr. Rosman, the letter of endorsement from Colonel Edmonds, were you given a copy of that document by Colonel Edmonds?

A. Yes, I was.

Q. Did you discuss that with Colonel Edmonds?

A. I did discuss it with Colonel Edmonds before he sent it to the Commander, Colonel Burpee.

Q. And with respect to Plaintiff's Exhibit Number 9, is that your signature on the bottom of the document?

A. Yes, it is.

Q. Were you asked to sign that document when you received it?

A. I was told I had to sign that document on the day that I received it.

MR. BUTLER: Your Honor, I submit that these are not (p. 95) hearsay; they are admissible; and I move for their admission.

THE COURT: I will reserve on 8 and 9. Number 7 will be received.

[Plaintiff's Exhibit No. 7 for identification was received in evidence.]

BY MR. BUTLER:

Q. Dr. Rosman, after you received the letter of denial, the notice of denial from Colonel Burpee, what did you do?

A. Major Jonas at that point in time introduced me to the Area Defense Counsel, who explained to me what would happen if I would not obey the order.

Part of what he told me was that I would be court-martialed and if found guilty, . . .

MR. LAWRENCE: Objection, Your Honor.

The objection again is to hearsay.

THE COURT: Your objection is overruled.

THE WITNESS: If I would be found guilty, I could lose my medical license.

BY MR. BUTLER:

Q. So what did you do after you received that information?

A. I spoke with my counsel at that time.

Q. Did you continue wearing your yarmulke?

A. Immediately, the day after I received the order, I (p. 96) did not wear the yarmulke.

Q. Just so we can put this in some kind of time frame, do you recall what day of the week it was that you received that information from the Area Defense Counsel and decided to take your yarmulke off?

THE COURT: One moment.

What is your proffer of this witness?

MR. BUTLER: Your Honor, defendants have sought to establish that the wearing of a yarmulke while in uniform would somehow interrupt or interfere with discipline, uniformity, esprit de corps in job performance generally.

I intend to establish through this witness that after this story would progress, after a period of time, he was permitted to wear his yarmulke again.

He did wear it for a period of two years in the Air Force at a hospital, a regional hospital at Pease Air Force Base.

He did so without any adverse effect, no consequences, criticism, questions being raised about it, or any other adverse effect.

MR. LAWRENCE: Your Honor, that testimony is essentially irrelevant here on the basis of a single incident.

We had testimony which came out previously which deals with the rules of general application, and the basis for our case was made on the basis of a rule for general application (p. 97) and its enforcement.

Perhaps single incidents of non-enforcement or different enforcement of the rules would be irrelevant to the presentation here. We object.

MR. BUTLER: Your Honor, I submit that the information is both—the evidence would be both probative and relevant.

The testimony that has taken place before the court deals with, I admit, the general policy.

Dr. Rosman is one example.

We will be presenting other evidence of other examples and evidences of people who continued to wear yarmulkes on their Air Force bases without any problems.

THE COURT: Well, I will receive the testimony, but I doubt that it can be relevant to what I have viewed to be the crucial issue.

But I will receive the testimony.

MR. BUTLER: Very well, Your Honor.

BY MR. BUTLER:

Q. Once again, Dr. Rosman, so we can put this in a time frame, what was—do you recall the day of the week that you . . .

A. It was a Wednesday.

Q. What did you do after you indicated you contacted counsel?

Who was the counsel at the time?

A. Mr. Lewin.

(p. 98) [Mr. Butler hands another document to Mr. Lawrence to view.]

BY MR. BUTLER:

Q. Dr. Rosman, I place before you what has been marked for identification as Plaintiff's Exhibit Number 10.

[The exhibit is handed to the witness, who looks at it.]

BY MR. BUTLER:

Q. Can you identify that document?

A. It is a copy of a letter that was sent to a Mr. David Johnson in the Office of General Counsel, Department of the Air Force, by Mr. Lewin on my behalf.

Q. Did you request that Mr. Lewin send that letter for you?

A. I did.

Q. Did you receive a copy of that letter at or around the time that it was sent?

A. Yes, I did.

MR. BUTLER: Your Honor, I move for the admission of Plaintiff's Exhibit Number 10.

MR. LAWRENCE: Your Honor, we make the same hearsay objection, that the statement is not made by the declarant, he is unavailable.

MR. LEWIN: Your Honor, I certainly do not wish to . . .

THE COURT: One moment.

(p. 99) MR. LEWIN: Certainly.

THE COURT: One lawyer at a time.

MR. LEWIN: Yes, sir.

MR. BUTLER: Your Honor, first, I am prepared for Mr. Lewin to authenticate the document if necessary.

THE COURT: I know you are.

MR. BUTLER: But, more importantly, the witness has testified that this letter was sent at his request, at his direction, and that he received a copy of the letter at the time.

THE COURT: I do not know that it is particularly relevant. That is my problem.

MR. BUTLER: The substance of this letter, I believe, addresses the very issues that are addressed in this lawsuit.

And the matters were considered at the time by the Air Force.

And in the instance of Dr. Rosman, the same kinds of issues were considered by the Air Force in the case of Dr. Goldman.

THE COURT: The issues that are considered by the Air Force at the time vis-a-vis Goldman or anybody else are not necessarily controlling as to the issues to be decided here as we tried to frame it.

Are you saying they are estopped . . .

MR. BUTLER: No, sir.

(p. 100) They are . . .

THE COURT: . . . From treating the plaintiff in this case, Goldman, any different than they treated Dr. Rosman?

MR. BUTLER: No, sir.

I am simply maintaining, as a matter of policy, the Air Force has considered this matter before and treated it differently than they did today.

THE COURT: Not at the highest level where they are trying to have the policy established.

There has been no—I think they would stipulate. The Air Force would stipulate that you could probably dredge up a significant number of people, 15 or 20, over the years who may have had ad hoc determinations made for them.

MR. BUTLER: The particular addressee of Plaintiff's Exhibit Number 10 is the Office of the General Counsel at the Pentagon.

Other recipients of the letter were the Deputy Assistant Secretary of the General Counsel.

THE COURT: I will reserve on this until I hear the testimony of Dr. Rosman.

MR. BUTLER: Very well.

MR. LAWRENCE: Your Honor, the relevancy objection runs through the whole gamut of the testimony, including the exhibits offered in support of it.

THE COURT: Yes, I understand that.

(p. 101) MR. LAWRENCE: Thank you, Your Honor.

BY MR. BUTLER:

Q. Thereafter, did you have, after the letter was sent in your behalf and at your request, did you have an

opportunity to meet again with Colonel Burpee concerning the question of your yarmulke?

A. I was told in Colonel Burpee's office the following Tuesday.

And at that point in time, Colonel Burpee told me that it would be permissible for me to wear my yarmulke while on active duty while wearing my uniform.

MR. LAWRENCE: For the record, we object and ask that the hearsay testimony be stricken.

THE COURT: For the record, your objection is overruled.

BY MR. BUTLER:

Q. Approximately how many days went by then where you did not wear your yarmulke?

A. Three or four days.

Q. After your meeting with Colonel Burpee, did you commence wearing your yarmulke and continue wearing it for the full two years of your service?

A. Yes, I wore my yarmulke from that point on until I was discharged from extended active duty.

Q. Did Colonel Burpee impose any restrictions on where (p. 102) on base you could wear your yarmulke?

A. No.

Q. You were permitted to wear it everywhere?

A. That's correct.

Q. Even wore it in the hospital?

A. Yes, I did.

Q. You wore it while you were treating patients?

A. Yes.

Q. And you wore it while you were working at the nursing center?

A. That's right.

Q. During that two-year period, did you receive any inquiries or comments from your patients concerning your wearing of the yarmulke?

A. Occasionally.

As a pediatrician treating children who had never seen the yarmulke before, they would ask me what it was.

Occasionally, their parents would tell them that it was my religious belief to have my head covered.

And if the parents would not, then I would tell them that it was my religious belief to have my head covered in deference to God.

Q. Did any of the enlisted men on base question you about wearing the yarmulke?

A. No.

(p. 103) Q. Did you receive any indication that the yarmulke in any way interfered with your ability to perform your duties as a pediatrician?

A. No.

Q. Once you were permitted to wear your yarmulke for that period of time, did you have any indication that any kind of discipline problems developed at Pease Air Force Base as a result of your wearing the yarmulke?

A. No.

MR. BUTLER: I have nothing further, Your Honor.

THE COURT: All right.

THE COURT: Mr. Lawrence?

MR. LAWRENCE: Your Honor, I have no questions of this witness.

Again I move that his testimony be stricken as irrelevant.

THE COURT: I will take that motion under advisement.

THE COURT: You may step down, Dr. Rosman.

[The witness leaves the stand.]

MR. LEWIN: Your Honor, the plaintiff will call Dr. Samuel Levinson.

* * *

(p. 105) *Direct Examination*

BY MR. LEWIN:

Q. Dr. Levinson, would you please state your full name and address.

A. Samuel Levinson, 12207 Devilwood Drive, Potomac, Maryland.

Q. And, Dr. Levinson, what is your occupation?

A. I am a clinical psychologist.

Q. Are you self-employed?

A. At the moment, yes; at the time, yes.

Q. Dr. Levinson, could you please briefly summarize your formal education from college on.

A. I got my undergraduate degree in Emporia, Kansas, in 1951; came aboard in the Air Force; got an Air Force-sponsored master's degree and a commission in '55 —I guess it was '55; and in '57, was assigned by the Air Force for a doctoral program at Denver; finally finished that doctorate at the University (p. 106) of London in '68.

Q. So you have a Ph.D. in psychology?

A. And the American Boards, which is a supplementary designation or equivalent to medical residency.

Q. So you have received Board certification as well?

A. Yes.

Q. Have you served with the United States Air Force?

A. Twenty-six years.

Q. And what was the final position that you held with the United States Air Force?

A. I was chief clinical psychologist.

Q. Could you speak up, please.

A. I was chief clinical psychologist to the Air Force surgeon.

Q. At what period of time were you chief clinical psychologist to the Air Force?

A. From '71 to '77, until I retired.

Q. And prior to that, had you held other positions in the field of psychology with the Air Force?

A. Yes.

Q. All right.

I place before you, Dr. Levinson, what has been marked as plaintiff's Exhibit Number 11 for identifcation, . . .

[The exhibit is handed to the witness, who looks at it.]

(p. 107) BY MR. LEWIN:

Q. . . . A copy of which I gave to government counsel before we resumed this afternoon.

Could you tell us what that is.

A. That is my resume.

Q. And it includes your various Board certifications and employment?

A. Yes.

Q. It also includes on the second page various consulting positions you have held?

A. Yes.

Q. Are you a member of professional organizations in the field of psychology?

A. I am.

Q. Specifically, the American Psychological Association?

A. Yes.

Q. And the Virginia Psychological Association?

A. Uh-huh.

Q. And you have received professional honors from the United States Air Force, commendations, medals, as indicated on page 2?

A. Yes.

Q. Have you also engaged in teaching or lecturing?

A. Yes.

Q. And that is reflected on plaintiff's Exhibit 11 for

(p. 108) identification?

A. Uh-huh.

Q. Is it?

A. Yes.

Q. And you have also given speeches and lectures in the field of psychology?

A. Yes, I have.

Q. All right.

MR. LEWIN: I would like to, first off, offer plaintiff's Exhibit 11 for identification into evidence.

MR. LAWRENCE: No objection.

THE COURT: It will be received.

[Plaintiff's Exhibit No. 11 for identification was received in evidence.]

MR. LEWIN: And at this time, on the basis of Dr. Levinson's testimony, also I would like to offer him as an expert in military psychology—military psychology.

THE COURT: Do you wish to voir dire?

MR. LAWRENCE: Your Honor, I will just reserve for cross-examination.

I will pick it up on cross.

THE COURT: Very well.

He will be accepted as an expert.

BY MR. LEWIN:

(p. 109) Q. Now, during what period of time were you chief clinical psychologist for the Air Force?

A. From '71 to '77.

Q. And prior to that, from—is it 1954 you had served as a psychologist in the Air Force. Is that right?

A. Prior to 1954, yes.

Yes, I served as a psychologist in the Air Force. The Air Force did not require a Ph.D. at that time.

Q. Now, I direct your attentions specifically, Dr. Levinson, to the question of Air Force uniform, the Air Force dress code.

A. Yes.

Q. Could you please tell the Court whether as an expert psychologist your view is that the wearing of a uniform is beneficial in some way to the military service?

A. There is no question about that.

Q. All right.

A. It is a means of identification and all things that come with it.

Q. And there has been testimony that it affects matters such as discipline, teamwork, motivation, esprit de

corps, and image of Air Force personnel to wear an Air Force uniform. Do you agree that those things are affected?

A. Certainly. Certainly.

Q. By the way, are you aware, as a psychologist, of any (p. 110) studies that the military has undertaken in this regard?

A. No.

Q. Uh . . .

A. Not to my knowledge, they have not.

They have assumed with great conviction these matters, but have not really tested them.

The Defense Department has bought millions of dollars of research and leadership in personnel matters of this kind, but have always taken the stance that this is the way it has always been and this is the way it is and this is the way it perhaps has to be.

And they have had ample opportunity to buy that research as well.

Q. Now, let me direct your attention to . . .

THE COURT: Well, let me ask this: . . .

THE WITNESS: Yes, sir.

THE COURT: . . . During the time that you were in your capacity, did you ever suggest to them that there was not any basis for the assumption they had made in that regard, that research was necessary in order to validate it?

THE WITNESS: The issue never came up.

And as a medic, the issue of uniforms, unless they became issues of litigation and I would be involved as an expert witness, did not come up.

The medics do not get involved in defining uniforms (p. 111) except as they related to life-support systems.

Now, the question of its impact on the psychology of personnel and on morale and my role as a psychologist responsible to counsel with youngsters with valid discipline problems, I would be familiar with it in that context.

BY MR. LEWIN:

Q. Now, Dr. Levinson, let me direct your attention to the question of exemptions or exceptions to the dress code.

In your experience and from your experience, do exemptions or exceptions to the dress code necessarily undermine the various beneficial factors I have enumerated and that you have agreed to with regard to military dress?

A. The common phrase, such as good order and discipline—the exceptions more often than not create a sense of being special, a sense of esprit de corps around limited exceptions, the black beret, the Air Force policemen wear now, the pilots that like to wander around in their flight suits—and you see them in the PX and in the officers' clubs wandering in.

You know, people look for something a little special that sets them aside; and in a positive way, this has kind of always worked.

Nobody has really made an issue of those things unless their unrigidity was such that they could not handle

the flexibility or unless they needed a weapon to go after somebody that had bugged them and they could not get them on a legitimate (p. 112) issue that they were concerned with.

Q. Well, directing your attention specifically to your own experience, do you know during your—those twenty-how many years?

A. Twenty-six.

Q. . . . twenty-six years in the Air Force, of exceptions to the military dress code, that there were instances when people did violate the military dress code?

A. Every day you would see people with yarmulkes in the PX.

Occasionally, we would see people walking around in their flight suits. We would see people in the hospital wearing their operating-room green.

Q. Well, let us take the operating room green. Is there a restriction with regard to—you are talking about the green smock that a doctor wears . . .

A. Yes.

Q. . . . In the operating room?

A. Yes.

That is not part of a hallway uniform. It is not part of a uniform that you wear in a clinic. That is for the operating room.

Q. And by regulations, limited to the operating room?

A. I think so.

Q. And, nonetheless, people would walk around outside (p. 113) the operating room . . .

A. Simply because it was convenient and they were more concerned about getting their job done than whether or not somebody wore greens or whites.

Q. Other exceptions—another exception you mentioned was pilots in flight suits.

How was that an exception . . .

A. All right.

Because you are not to wear . . .

Q. . . . or variation?

A. You are not to wear flight suits off the flight line.

But, you know, it is a badge of honor; and you would see them in the PX, at the officers' club, and around until it bothered somebody; and then it would probably be brought up.

There is another little bit: I noticed people wearing the "I Gave" or "We Gave" combined Federal campaign badge.

Q. You mean the little button, the little medal?

A. The little button, yes.

Q. And that is not permitted by the dress code?

A. To the best of my knowledge, no restriction prohibited it; except that it was not decreed as a formal part of the regulations.

But nobody came up with any issue about it.

People worked during the campaign; and if they cared (p. 114) to, or they wore it if they were assigned as a

project officer; and, therefore, if he wanted or needed to make a bit of it—and then it disappeared.

Q. Had there been items of dress or clothing that are now permitted by Air Force regulations which began as really a variation from that Air Force code?

A. Well, I would think of the baseball cap.

Q. Baseball caps are not permitted?

A. Well, they gave—the Navy gave President Reagan a baseball cap when he was on the aircraft carrier recently; and they had taken to wearing baseball caps as official uniform now on the flight lines.

But, initially, I do not think they were declared official uniform.

It just turned out that those who wore them found that they were more effective than what was uniform at the time, and then they have since become uniform, I suppose.

Q. As a psychologist with your years of experience in the Air Force, could you just describe for the Court how you view or whether there are any beneficial aspects to granting an exemption or an exception to variations from the dress code.

A. Well, I think in the context of a rigid system, when youngsters kind of feel that things are boxed in pretty tight, if there are things that demonstrate that there is indeed flexibility, is indeed compassion, or that changes can be made (p. 115) rationally, that things are not imposed in a rigid or, as the youngsters refer to it as, in a "chicken" fashion, then it gives some sense of humanness about it.

And you feel less a victim of the absolute, less a victim of rigidity, less necessary to oppose or to resist or to get into struggles with it.

Zumwalt demonstrated this with the beard issue in the Navy some years ago.

Q. Are you talking about Admiral Elmo Zumwalt?

A. Yes.

You know, I thought it was a rather brilliant psychological move to recognize that there were a lot of young people with natural opposition tendencies that could readily marshal around this and make a cause celebre and waste a great deal of time and money.

And if he could avoid the then need to develop and act out these oppositional needs on issues of importance, which he, in my view, did—the youngsters then went and had their beards—it did not have any significant negative effect on the Navy and he disarmed this struggle.

They had a place to do their thing.

Q. Is there, in your view, necessarily a negative impact on other personnel of the military service if there are variations or exceptions permitted, in other words?

Do others view that as a basis for resentment, (p. 116) envy, . . .

A. I think that depends . . .

Q. . . . or jealousy?

A. I think that depends on what it is.

If you get the feeling that someone else is a favorite child in the family and the daddy commander, then there would be some resentment for that.

But if it is an issue that relates to something and to somebody that carries respect, then you view it as a statement of humanness in the system.

Q. All right.

We have not to this point, Dr Levinson, discussed this in the context of religious demands or religious exemptions.

Do you think that exemptions from the dress code based on the religious need of an observer add anything to your analysis you provided heretofore?

A. No, I do not think variations, you know, as long as they are not gross, would contribute to, you know, good taste and they would contribute to the sense of humanness.

In the years I have observed, I have noticed no negative—I have had no negative experience, you know.

Q. All right.

Would the fact that a particular variation from the dress code based on religion affect other personnel's view of (p. 117) that variation in any way?

A. No, I think what they would do is treat it with respect and get a sense of the system is somewhat flexible and that the system does respect—does respect religion.

And that if they indeed wanted to modify their uniform in the same way, they could look into converting.

There was a non-religious issue, the concern among black troops with psuedofolliculitis.

Adolescent blacks tend to get ingrown hair. And it became a power struggle very often on a training base.

Q. Were there exemptions from the grooming requirements . . .

A. There were . . .

Q. . . . for medical reasons . . .

A. . . . exemptions.

Q. . . . and those who could not shave?

A. And I would often serve as ombudsman for youngsters whose administrative people would resent the fact that they went to the hospital and resented the hospital for giving them one.

They said, "you cannot do that"—an inappropriate power struggle.

Q. But once it was recognized that this was based on medical grounds, was that respected by fellow members of the service?

A. Then it ceased to be an issue.

(p. 118) Q. And with regard to religious variations, is it your view as a psychologist that the same would be true if exemptions were permitted for religious variations . . .

A. Yes.

Q. . . . from the dress code?

A. Yes.

Q. Would that in any way have any educational impact on Air Force personnel as well as with regard to our pluralistic society?

A. Yes, I think it would teach people that there is room for differences, differences that are not flaunted in

a negative or power-struggle kind of way, differences that have little or nothing to do with the mission at hand, you know.

Q. Did the name, Simcha Goldman, come across your desk at any time while you were in the Air Force?

A. I am responsible for Simcha Goldman in the Air Force.

Q. How are you responsible for Mr. Goldman—Dr. Goldman?

A. As chief psychologist, I recruited him for a doctoral training program.

Q. Did you meet him personally?

A. No, only on the phone through his credentials.

Q. Did you know at the time that you recruited him that he was of the Orthodox Jewish faith?

A. Yes.

(p. 119) Q. Are you yourself Orthodox Jewish?

A. I am Jewish, but not Orthodox.

Q. How did you know that he was Orthodox Jewish?

A. I asked him as a matter of, you know, being able to consider where we might get him training and where he might need to be assigned.

Q. Did you know he had previously been a Chaplain?

A. Yes.

Q. And were you aware of any religious observances that he had?

A. It never became a subject of conversation as though it would be a problem.

I knew he was a Chaplain in the Navy, had served in the Carolinas somewhere with a Navy jail, had done a good deal of counseling, and that part attracted me.

And I thought that given his rabbinical training, demonstrating that he could do the graduate work, and his pastoral counseling experience, that we were half-way home in having an experienced military officer functional in clinical psychology, compared to a youngster recruited fresh out of graduate school that would take a couple of years to train.

So I was quite anxious to get him once I found out that he could fit into the system.

Q. And did you know that his religious—certain religious requirements of his could be satisfied by being near a (p. 120) large metropolitan center?

A. I knew that that would be the case, and I did not make any promises to him; but I marked it in my own diary that if that were possible, I would do that.

However, I have known many Orthodox people over the years who manage their own observance in their own quiet way, you know, without asking for or particularly needing special assignments.

Q. After Dr. Goldman was assigned—were you involved in his being assigned to March Air Force Base?

A. Not directly.

At that time—by that time, I was on my way into retirement, and the assignments were being handled by Colonel Foley, my successor.

Q. But did you continue with Air Force past the time that he was assigned?

A. Yes, in a consultant capacity.

Q. And was th[illegible] any time after he was assigned to March Air Force Base that you heard anything derogatory about him?

A. No, and being here in Washington and being in touch with the hierarchy that I have dealt with all those years, they would not have resisted the effort to lay a problem at my door had one arisen that, you know, I had some responsibility for or at that time wanted to tease me about.

Q. So to your knowledge, there was no problem resulting (p. 121) from his religious observances at March Air Force Base?

A. No.

Q. And, specifically, directing your attention to the question of a commissioned officer in the Air Force wearing a yarmulke, a skullcap on his head at all times, in your view as an experienced Air Force psychologist, does that present any serious problem of any kind to discipline in the Air Force?

A. None whatsoever.

Q. In your view, if such a person were allowed to wear a yarmulke, would that present any serious problem of any kind to teamwork in the Air Force?

A. None whatsoever.

Q. Would that present any serious problem of any kind to motivation to himself or other persons in the Air Force?

A. It would contribute positively because it reflects less need for resistance to a system that demonstrates some flexibility.

Q. Would it present any problem of any kind to esprit de corps in the Air Force?

A. None whatsoever.

Q. Would it have any beneficial factors?

A. Well, yes, because it can accept certain differences; and the unit could still say, "we are brothers in this mission, and we are brothers that can be different in our own ways and (p. 122) yet the same as we zero in on this mission."

THE COURT: Do you make any distinction between enlisted personnel and commissioned officers?

THE WITNESS: I served in both capacities, no, no.

There may be times when officers or enlisted men might pout and say, "How come he gets to do this and I don't?"

And when I was Patient Squadron Commander, I got complaints about pseudo-folliculitis, like "How come he does not have to shave and I have to?"

And I said, "Go get the disease and you will not have to shave."

And, you know, that was somebody needing to pout.

But, for the most part, the teammates, the barracks mates, of the people that warranted or got any special consideration were able to look at that not as something that was flaunted or given as someone favored, a spoiled-

child kind of thing, but because "it was somehow necessary and appropriate for him and not necessarily for me."

And since it did not affect their pay, it did not affect their passes, it did not affect their opportunity for education or recreation or choice of job—you know, he did not get KP because he wore the yarmulke—it became simply a statement that the system does have some respect for pluralism and in some respect some flexibility.

I think it enhances the system.

(p. 123) There are always people who are locked in rather tight who are frightened by changes in the system because the same script was dragged out when Zumwalt went with the beards: "It is going to destroy good order and discipline, and we cannot have this kind of flexibility. We will have people with beards down to their ankles. What are we going to do? And it will destroy everything."

Nothing of significance happened.

The issue of hazing at the Military Academy: "We need this to separate the wheat from the chaff" and that kind of nonsense. "We make it tough here, and they learn to stand up for what we stand for."

There is no evidence that Academy graduates do any better under fire than non-Academy graduates or that the commissioned history of reserve officers is any more significant than enlisted men.

They are not gods and do not do the research to demonstrate the point.

BY MR. LEWIN:

Q. And let me ask you, finally, Dr. Levinson, with regard to the fifth of the five factors to which there has been testimony here: is the image of the Air Force or Air Force personnel, in your view as an Air Force psychologist for 26 years, affected deleteriously in any way by permitting an Orthodox Jewish member of the Air Force, whether commissioned officer (p. 124) or enlisted person, to wear a skullcap or the yarmulke?

A. Undoubtedly, it would reflect the acceptance of pluralism, of flexibility, of humanness in the system, of recognizing that there are reasonable differences that do not affect the mission and do not affect the tasks at hand, and that would reflect to others that there is some respect for their differences and it is okay to be somewhat different in this accessible context.

And religion is certainly one of the most accessible contexts in our culture.

Q. Thank you very much.

MR. LEWIN: No further questions.

Cross-Examination

BY MR. LAWRENCE:

Q. Dr. Levinson, are you aware that the current Navy policy has departed from the permissive wear of beards since. . .

A. Yes, I am, but is there any evidence that justifies changing that?

It is my view that that is a function of the conservative wave that has come along with the conservative politics of the Reagan administration.

Q. Do you have any empirical studies to support that determination?

A. No more than what the Navy has to offer or that you have studies to offer me.

(p. 125) In fact, I would be glad to hear them.

I do not think that they exist.

Q. I was just asking you if the opinion you just voiced on the change was supported by any . . .

A. The whole society has become more conservative . . .

Q. I know but my question is . . .

A. . . . And that is empirical.

Q. Excuse me.

My question is, had there been studies?

A. No.

Q. Okay.

Thank you.

Now, when you were serving in the Air Force both in the Surgeon General's office and while you were serving as a psychologist or any particular position in the Air Force, your responsibilities were as a psychologist. Is that not correct?

A. Or as a military officer?

Q. Surely.

A. I served as patient squadron commander, as librarian, as paymaster, as fire marshal, as . . .

Q. Were you ever a hospital commander?

A. No, only physicians were hospital commanders.

Q. Were you ever in command of any military unit?

A. You mean a fighting unit?

(p. 126) Q. Fighting unit.

A. Medics are not assigned as commanders of fighting units.

Q. You say you never had a . . .

A. I did fire a weapon twice in my 26 years. An airplane looked about this big (demonstrating) from my office.

Q. You never then served in any capacity dealing with command of a unit?

A. Oh, yes.

I was consultant.

Q. I mean as a commander.

A. I would also work with the squadron commanders, be on the front line, . . .

Q. Excuse me.

A. . . . As an observer.

I was close enough to know about the psychological stresses . . .

Q. I think my question . . .

A. . . . Of doing exact work.

Q. My question was . . .

THE COURT: One moment.

It is impossible for the court reporter to keep an accurate record of what is going on. It is impolite to cross-talk over each other. And it certainly makes it difficult for me to understand why we are here.

(p. 127) So let us simmer down. I am going to give everybody an opportunity. You have all day long to get on the record what should be gotten on the record, but we can only do it in an orderly fashion.

MR. LAWRENCE: Thank you, Your Honor.

THE COURT: Now, ask your questions and give Dr. Levinson an opportunity to respond.

BY MR. LAWRENCE:

Q. Dr. Levinson, did you ever serve while you were on active duty in the directorate of personnel plans for the Air Force?

A. I did not.

Q. Did you ever serve in the office of deputy chief of staff for manpower and personnel?

A. I did not.

Q. When you were at an air base, while you were not in the Surgeon General's office at the Pentagon, did you ever serve in the central base personnel office at a particular installation?

A. I did not.

Q. You indicated during your testimony, I believe, Dr. Levinson, that you had observed instances of departures from regulations insofar as—and I think your example, one example, was the wearing of a flight suit in the PX?

A. Yes.

(p. 128) Q. And the wearing of operating room greens outside of the operating room?

A. Uh-huh.

Q. And . . .

A. And the yarmulkes in the PX.

Q. And the yarmulkes in the PX.

Did you ever undertake any comparative study about installations where the regulations were enforced and where those individuals received some sort of discipline if they departed from the uniform regulations in that particular regard?

A. I had neither the money nor the staff to do that.

But when I heard objections, I did make the suggestion to the Commander that perhaps we ought to look at this systematically.

Q. Did you—have you ever done any specific studies on—either while you were in the Air Force or since—on the wearing of the uniform?

A. No.

Q. Have you ever done any studies, comparative studies, on departures from a strict uniform policy?

A. No formal studies.

Q. Did you ever—have you ever done any research or undertake any studies dealing with the questions by comparison of morale, motivation, discipline, teamwork, image, esprit de corps as it compared to a post or installation (p. 129) where the uniform policy was maintained strictly compared with another place where the uniform policy was not completely enforced?

A. Only professional observations.

Q. Are you aware that there was congressional testimony during the aftermath of the difficulties on *The Kittyhawk,* testimony which gave indication that part of the problem stems from the lax nature of enforcement of uniform policy and its deleterious effect on the personnel serving of *The Kittyhawk*?

A. I am aware of the testimony, but I think there is a question about interpreting that and the inference that I think you are making here with it.

Q. Like what?

A. We do not know what else was going on at *The Kittyhawk* and whether the issues with morale and behavior were functions of uniform violations or whether they were violating the uniform as a passive aggressive way of saying, "You know, I have got to fight back in some way."

That is a manifestation of problems in leadership, I would think, on *The Kittyhawk,* not a function of whether or not they buttoned three buttons or four or wore some little bit here or there on the uniform as part of some identification, some identity issue.

Q. But there was testimony, was there not, that part of the impact was a result of lax enforcement of regulations?

(p. 130) A. Oh, generally.

MR. LEWIN: I object to the question.

THE COURT: Wait now one minute.

THE COURT: Dr. Levinson, what he is talking about is lax enforcement of regulations.

There is not any question that there was lax enforcement of all kinds of things on *The Kittyhawk,* from the bridge on down to the boilerroom.

THE COURT: All Dr. Levinson is saying is that you cannot focus that on uniform, whether there was violation of military uniform that gave rise to it.

MR. LAWRENCE: Your Honor, my point was simply directed to whether there was testimony at the inquiry on that point given as a factor.

THE COURT: You can find testimony on a given point all over the lot. He will concede that there was testimony on it—who gave it, why, where did it come from—that is irrelevant as far as I am concerned.

It is only relevant as testimony to somebody who really knows what he is talking about, testimony from somebody who has studied it, experienced it.

You can get anybody at one of these hearings to say anything. Witness what is going on right now on the Hill.

BY MR. LAWRENCE:

Q. Dr. Levinson, you gave an indication, I believe, (p. 131) in your direct testimony that in some instances exemptions to the uniform policy gave, depending on the circumstances, the impression that the person receiving the exemption was being treated as a favorite or favorite child under a given set of circumstances—a benefit to some but not to others.

A. It is always damaging in any organization or any family—any organization, which are extensions of families, psychodynamically.

It is always damaging if someone is given rights and privileges that they either do not deserve or that the others are not given, you know, in some non-objective kind of way.

We are not talking about that kind of thing.

Q. In your opinion then, would it be--would it have that negative effect if one group, let us say, the Orthodox Jews, were permitted to wear their religious garments or the yarmulke and another group, let us say, the Sikhs, were deprived of the wear of their religious garment?

A. I do not think so.

The Sikhs did make an issue. They had an issue some years ago in the Army in a basic training setting, I understand; and there was some compromise.

They were able to not have to cut their hair or something during basic training. That was allowed and the Army did not come apart.

(p. 132) Q. Well, do you . . .

A. But I do not know the details of that, but it did become a religious issue.

I do not think it had to be litigated. It was one of those things where the people who made—the regulation people and the legislative people took the responsibility of doing what they were supposed to do instead of having the courts being an agency of legislation.

Q. Well, I . . .

A. Things that reflect understanding, flexibility, compassion, that are not flaunted, that are not power struggles, put-down issues, you know, usually contribute positively to the function, to the morale and discipline of the organization.

It gives the commander more respect from the troops if they know that the commander is someone who can listen, who is not so tightly regulation bound as in the caricatures that we see in lots of movies and literature—people who are so inflexible that it is regulation imperialis.

It gives a sense of being able to approach the father figure, a sense of humanness; it is a positive sense of morality organization.

THE COURT: But, Dr. Levinson, you are not answering the question that was asked by Mr. Lawrence.

He asked you the question—he asked you specifically if, A, for religious reasons, is given the right to wear a (p. 133) certain garment or insignia or whatever, B makes the same request for his insignia, would it not create problems at least with morale and perhaps with discipline if you grant A's request and deny B's request. And we are assuming that both requests are honestly held by practicing members of a recognized religious group.

THE WITNESS: I would have to say yes.

* * *

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 81-1522

S. SIMCHA GOLDMAN,

Plaintiff,

v.

SECRETARY OF DEFENSE, *et al.*,

Defendants.

DEFENDANT'S RESPONSES TO PLAINTIFF'S REQUEST FOR ADMISSIONS

Pursuant to Rule 36, Fed. R. Civ. P., defendants, through counsel, hereby provide the following responses to plaintiff's request for admissions:

1. Plaintiff S. Simcha Goldman ("Goldman") is a member of the Orthodox Jewish faith.

ANSWER: Admitted.

2. Goldman is an ordained rabbi.

ANSWER: Admitted.

3. Goldman is a Captain in the United States Air Force, who has served on active duty at March Air Force Base ("March AFB") in Riverside, California, since September 1977.

ANSWER: Admitted.

4. Since September 1977, Goldman was assigned to the Mental Health Clinic of the Air Force Regional Hospital at March AFB, where he serves as a clinical psychologist.

ANSWER: Admitted.

5. It is a well-established religious tradition and practice among adherents to Orthodox Judaism that males keep their heads covered at all times.

ANSWER: Admitted.

6. In observance of the well-established religious tradition among adherents to Orthodox Judaism, Goldman wears a skull cap ("yarmulke") at all times.

ANSWER: Admitted.

7. Goldman has continuously worn a yarmulke since prior to his assignment to March AFB.

ANSWER: Admitted.

8. Since his assignment to March AFB in September 1977, Goldman has continuously worn a yarmulke, including while he is in military uniform, in accordance with his religious beliefs and practices.

ANSWER: Admitted.

9. For the period from September 1977 to May 7, 1981, during which Goldman wore his yarmulke while in uniform, Goldman's superior officers at March AFB raised no objection to his wearing a yarmulke while in uniform.

ANSWER: Admitted.

10. On or about May 8, 1981, Colonel Joseph Gregory, the Hospital Commander at March AFB, informed Goldman that wearing a yarmulke violated the Air Force's Dress Code Regulation ("AFR") 35-10.

ANSWER: Admitted.

11. On or about May 8, 1981, Colonel Gregory ordered Goldman to cease wearing a yarmulke indoors while in uniform at all places at March AFB, except that Goldman was specifically permitted to continue wearing his yarmulke while working and in uniform at the Regional Hospital located at March AFB.

ANSWER: Admitted.

12. On or about May 8, 1981, upon receiving Colonel Gregory's order concerning the wearing of a yarmulke while in uniform, Goldman informed Colonel Gregory that the wearing of a yarmulke was required by his Orthodox Jewish religious beliefs and practices and was a protected religious observance pursuant to the First Amendment of the United States Constitution.

ANSWER: Admitted.

13. On or about May 8, 1981, at the time of Colonel Gregory's order concerning the wearing of a yarmulke while in uniform, Goldman requested permission to continue his previously unchallenged practice of wearing a yarmulke at all times and in all places while in uniform at March AFB.

ANSWER: Admitted.

14. On or about May 8, 1981, at the time of Goldman's request for permission to continue wearing his yarmulke at all times and in all places while in uniform, despite the provisions of AFR 35-10, his request was denied.

ANSWER: Admitted.

15. Commencing on or about May 19, 1981, Goldman's counsel contacted the office of the Air Force Assistant

General Counsel for Personnel and Fiscal Affairs, explained Goldman's situation, and requested that the Air Force continue to permit Goldman to wear his yarmulke at all times as he had for the past three and one-half years.

ANSWER: Admitted.

16. The efforts of Goldman's counsel to secure an exemption for Goldman from the Air Force's interpretation of AFR 35-10 for purposes of his wearing a yarmulke while in uniform extended over a period of several weeks, but were not successful.

ANSWER: Admitted.

17. On or about June 23, 1981, Goldman was ordered by Colonel Gregory to cease wearing his yarmulke anywhere while in uniform at March AFB, including the Regional Hospital. Colonel Gregory informed Goldman that the wearing of a yarmulke while in uniform violated AFR 35-10.

ANSWER: Admitted.

18. On or about June 23, 1981, at the time of Colonel Gregory's order, Goldman explained to Colonel Gregory the nature of his religious observance and expressed his desire to continue wearing his yarmulke at all times, as required by his religious practice and beliefs.

ANSWER: Defendants admit that on or about June 23, 1981, at the time of Colonel Gregory's order, Goldman explained to Colonel Gregory the nature of his religious observance and expressed his desire to continue wearing his yarmulke at all times, but denies the wear of the yarmulke is required by his religious practice and beliefs.

19. On or about June 23, 1981, at the time of Colonel Gregory's order directing Goldman to remove his yarmulke while in uniform, Goldman requested permission from Colonel Gregory to appear for duty in civilian clothes, pursuant to an express exemption contained in AFR 35-10. Goldman's request was denied.

ANSWER: Defendants admit request no. 19, except deny that AFR 35-10 contains an express exemption which pertained to plaintiff's situation.

20. On or about June 24, 1981, Colonel Gregory issued a letter of reprimand to Goldman based upon Goldman's refusal to remove his yarmulke while in uniform in violation of Colonel Gregory's June 23, 1981 order, and in violation of defendants' interpretation of AFR 35-10.

ANSWER: Admitted.

21. Upon Goldman's failure to remove his yarmulke while in uniform, he was subject to immediate court-martial or other sanctions for violation of Colonel Gregory's June 23, 1981 order, and for violation of defendants' interpretation of AFR 35-10.

ANSWER: Admitted.

22. On or about June 24, 1981, following receipt of Colonel Gregory's letter of reprimand, Goldman submitted a written request to Colonel Gregory that formal processing of the letter of reprimand be delayed until June 29, 1981, the date upon which Goldman's military area defense counsel was scheduled to return to March AFB. Goldman's request was granted.

ANSWER: Admitted.

23. On or about June 25, 1981, Goldman was summoned to Colonel Gregory's office, and was informed by Colonel Gregory that, in light of Goldman's problems with the Air Force, resulting from his insistence upon wearing his yarmulke despite the provisions of AFR 35-10, Colonel Gregory had decided to withdraw a previously positive recommendation he had submitted in favor of Goldman's application for a one year extension of his service in the Air Force, and had, that day, submitted a negative recommendation on that application.

ANSWER: Admitted.

CHARLES F.C. RUFF
United States Attorney

ROYCE C. LAMBERTH
Assistant United States Attorney

CRAIG R. LAWRENCE
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(p. 1) UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 81-1522

S. SIMCHA GOLDMAN,

Plaintiff,

v.

SECRETARY OF DEFENSE, et al.,

Defendants.

Washington, D. C.
Thursday, August 6, 1981

Deposition of S. SIMCHA GOLDMAN, a witness of lawful age, taken on behalf of the defendant in the above-entitled action, wherein S. Simcha Goldman is the plaintiff and the Secretary of Defense, et al. are the defendants, pending in the United States District Court for the District of Columbia, pursuant to consent before Joyce Carr Mooney, a notary public in and for the District of Columbia, at the Conference Room, Second Floor, U.S. District Court for the District of Columbia, Third and Independence, Northwest, Washington, D. C. at 10:05 a.m., Thursday, August 6, 1981.

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S. Simcha Goldman	2	44	67	—

EXHIBITS:	MARKED FOR IDENTIFICATION
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Plaintiff's Exhibit Number 2	28
Plaintiff's Exhibit Number 3	30

Plaintiff's Exhibit Number 4 31

Plaintiff's Exhibits Number 5, 6, 7, 8, 9 40

(p. 2) APPEARANCES:

On behalf of the plaintiff:
Brownstein Zeidman and Schomer

By: David J. Butler, Esq.,
1025 Connecticut Avenue, N. W.
Washington, D. C.
and Robert Smith of the same firm and
Nathan Lewin, Esq.,
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2555 M. Street, N. W.
Washington, D. C.

On behalf of the defendants:

By: Craig Lawrence, Esq.,
Assistant United States Attorney
and
Major Francis Moran, USAF
Captain Thomas Fiscus, USAF

PROCEEDINGS

Thereupon,

S. SIMCHA GOLDMAN

a witness of lawful age, was duly sworn by the notary public and, being examined by counsel, testified as follows:

Direct Examination

BY MR. BUTLER:

Q. Would you please state your full name for the record?

A. My name is S. Simcha Goldman.

Q. What is your home address?

A. 449 North Laurel Avenue, Los Angeles, California.

(p. 3) Q. Are you currently employed?

A. Yes, I am.

Q. Where are you currently employed?

A. I am a clinical psychologist with the United States Air Force Regional Hospital at March Air Force Base near Riverside, California. I am a Captain in the United States Air Force on active duty.

Q. How long have you been affiliated with the Air Force?

A. I've been on active duty since September 1, 1977.

Q. What are the nature of your responsibilities as a clinical psychologist at March Air Force Base?

A. I am responsible for psychological testing; I do psychotherapy; various kinds of mental health evaluations; training of enlisted personnel.

Q. Have those responsibilities changed significantly since the time that you commenced your service with the Air Force until today?

A. No.

Q. Captain Goldman, would you describe briefly your post high school education?

A. I graduated with a bachelor's degree in English literature from Yeshiva University of New York in 1967.

I also, while I was working for my bachelor's degree, took religious studies.

I completed the requirements for a master's of (p. 4) science in Jewish philosophy and rabbinic ordination from Yeshiva University in New York in 1970, and I also earned a master of arts degree in English literature from City College of New York in 1970.

I completed an M.A. and Ph.D. in clinical psychology from Loyola University of Chicago in 1977.

Q. What kind of an institution is Yeshiva University?

A. Yeshiva University is a rather diversified university. It offers undergraduate and graduate programs in a variety of secular studies, professional schools and also is a theological seminary.

Q. Did you receive a degree from the theological seminary of Yeshiva University?

A. Yes, I did.

Q. What degree was that?

A. A rabbinic ordination degree.

Q. When did you receive that degree?

A. I completed requirements in 1970.

Q. Are you affiliated with any particular branch of Judaism?

A. Yes, I am an Orthodox Jew.

Q. Have you always been an Orthodox Jew?

A. Yes.

Q. Did you grow up in an Orthodox Jewish home?

A. Yes, I did.

(p. 5) Q. Were your parents Orthodox Jews?

A. My parents are Orthodox Jews and my father is an Orthodox rabbi.

Q. Was your father a practicing rabbi?

A. Yes, he was for a number of years.

Q. He was a rabbi in a synagogue?

A. Yes, he was. Until I was about 11½ he was a practicing rabbi in a synagogue.

Q. In the observance of traditions, customs and laws of Orthodox Judaism, are there certain things that you do that are different than what other people might do?

A. Yes. I keep my head covered at all times; I eat only kosher food; I pray three times a day every day. There are numerous ways that I express my religious convictions every day.

Q. With respect to the covering of your head or the wearing of a skull cap or a yarmulke, is that something that you were also doing as a child, as you were growing up?

A. Yes.

Q. Is that something you continue to do, to wear your yarmulke while you attended college and graduate school and other—

A. Yes.

Q. —educational institutions?

Can you explain for us briefly your understanding (p. 6) of the significance or the purpose for wearing a yarmulke and why it is that you wear a yarmulke?

A. A yarmulke is an expression of respect for God. It's intended to keep the wearer aware of God's presence, and to therefore act in accordance with one's obligations to God.

For me, a yarmulke is also a sign of intellectual humility in that I submit my own intelligence to the higher intelligence of God.

Q. It is not necessarily the wearing of a yarmulke is it? It's the covering of your head that is—

A. That is correct. Any head covering would be suitable.

Q. You have worn your yarmulke, say, ever since you've been a teenager at all times?

A. Yes, that is correct.

Q. While you were in school, did you have any problems as a result of your having worn a yarmulke? People criticizing you or otherwise questioning the nature of the observance?

A. No.

Q. Once you completed your formal education process, would you tell us the progression of your employment?

A. After I completed my rabbinic degree and the two master's degrees, I immediately entered the United

States Navy on active duty as a chaplain between September of 1970 and August of 1972.

(p. 7) I then was the rabbi of a small congregation in Mt. Clemens, Michigan, and after one year, I then entered graduate school at Loyola of Chicago in September of 1973 through August of 1977. During that time I had some part-time involvement with the Jewish Children's Bureau as a rabbi.

Q. When you were with the Navy as a chaplain on active duty, did you wear a uniform?

A. Yes, I did.

Q. Did you wear your yarmulke while you were in uniform at times when you were not wearing another head covering?

A. Yes.

Q. Did you ever have any problems or questions raised as a result of your wearing a yarmulke at that time?

A. I had no problems wearing a yarmulke at that time. My first commanding officer at the Marine Corps Recruit Depot at Parris Island asked the senior chaplain about the yarmulke and the senior chaplain told me of the conversation and said that he had informed my commander that it was part of my religious observance, and my commander raised no objection.

Q. After you left the chaplaincy and you commenced service as a rabbi at a small congregation in—where was it? Michigan?

A. Mt. Clemens, Michigan.

Q. I take it you wore a yarmulke when you performed (p. 8) those duties as well?

A. Absolutely.

Q. And at all times other than when you were in the synagogue?

A. Absolutely.

Q. When you performed your counseling services at the Children's Bureau in Chicago, did you also wear your yarmulke?

A. Yes.

Q. Did you have any indication from any of your co-workers or other people with whom you were affiliated, either when you were in the Air Force or in any of your other jobs that your wearing of a yarmulke somehow interfered with the performance of your duties?

A. No.

Q. After you completed your Ph.D. and your work at the Jewish Children's Bureau—that was when? In August of '73?

A. August of '77.

Q. Is my understanding correct that you then proceeded to the Air Force?

A. Directly.

Q. Why were you interested in affiliating with the Air Force?

A. At the time that I made a decision to go to (p. 9) graduate school for clinical psychology, I needed some

funding, and I discovered that the Air Force had a scholarship program, and I decided to apply.

I had thoroughly enjoyed my two years of active duty with the Navy and I had found it a very rewarding and growthful experience coming right out of seminary, and I anticipated that going into the Air Force right out of graduate school would be very rewarding and enjoyable and a professionally growthful experience.

Q. Did you complete applications or other requests for affiliation with the Air Force?

A. Yes, I prepared an application, I would guess some time in 1972.

Q. What kinds of information were requested on that form, if you can recall?

A. I believe that it was some standard application forms that went into my employment background, my educational background; basically a standard application.

Q. Would it have included reference, for example, to your service in the Navy as a chaplain?

A. Yes. They did ask about prior military service and I listed that.

Q. Did you have a personal interview prior to your affiliation with the Air Force?

A. No, I did not have a personal interview.

(p. 10) Q. How did you find out where you were being assigned?

A. I called the Chief of Psychology at Wright-Patterson to discuss the assignment, and I also, in fact, went

out and visited him to discuss the assignment during the summer prior to my going on active duty.

Q. You met with him personally?

A. Yes.

Q. Did you wear your yarmulke when you met with him?

A. Yes, I did.

Q. Did he say anything to you at the time that you would have to stop wearing your yarmulke when you became affiliated with the Air Force?

A. No.

Q. At that time were you told that you'd be going to March Air Force Base?

A. Yes.

Q. Did you receive some formal notification that you should report to duty?

A. Yes, I did.

Q. Was it written or oral?

A. Yes, I received written orders.

Q. Can you recall when you reported to March Air Force Base?

A. Yes. September 7, 1977.

Q. At that time when you reported for duty at March (p. 11) Air Force Base, did you wear a yarmulke?

A. Yes.

Q. Did anyone say that you should take the yarmulke off?

A. No.

* * *

Q. At each stage in this inprocessing process, did you wear your yarmulke?

A. Yes.

Q. Did anyone say to you that you had to stop wearing it in the Air Force?

A. No.

Q. When did you finally get to the hospital?

A. Well, I showed up, I believe, that day and said (p. 12) hello to my supervisor, Major Frank Young. He was at that time the Chief of Psychiatry.

Q. When you met Major Young were you wearing a yarmulke?

A. Yes.

Q. Did Major Young say anything to you about the wearing of a yarmulke?

A. No.

Q. Were you given any formal package of materials that you should read with respect to regulations of the Air Force?

A. No, I wasn't. Some time within the first couple of months I was given a physician's orientation handbook, just about what is accepted terminology, and that sort of thing.

Q. Do you recall who the hospital commander was at that time?

A. Yes. Colonel Lawrence Smith.

Q. Did you have an opportunity to meet Colonel Smith?

A. Yes.

Q. Is that in and around September of 1977?

A. About. Some time during the first month I imagine I saw him.

Q. When you met Colonel Smith were you wearing a yarmulke?

A. Yes.

Q. Did Colonel Smith tell you you had to take that (p. 13) yarmulke off?

A. No.

Q. Did Colonel Smith indicate to you that there was any question whether or not you could wear your yarmulke while in uniform?

A. No.

Q. Do you recall who the overall or wing commander was at the base at the time that you reported?

A. No, I don't remember.

Q. Do you recall whether you had an opportunity to meet that person, whoever it was?

A. Yes, I did.

Q. Was that also in and around September of 1977?

A. September or early October.

Q. When you met that particular wing commander were you wearing a yarmulke?

A. Yes.

Q. Did the wing commander tell you to take the yarmulke off?

A. No.

Q. Did the wing commander tell you that there was an Air Force regulation that raised some question as to whether you could wear a yarmulke while in uniform?

A. No.

* * *

(p. 15) Q. During the term that Colonel Smith was hospital commander did you have an opportunity to meet with him or to talk with him?

A. On numerous occasions.

Q. Did you wear your yarmulke while in uniform while talking to him, meeting with him?

A. At all times, yes.

Q. Did Colonel Smith ever tell you to stop wearing your yarmulke?

A. No.

Q. Did Colonel Smith ever raise question as to the propriety of wearing your yarmulke in light of Air Force Regulation 35-10?

A. No.

* * *

(p. 16) Q. When you met with Major Young while he was your supervisor, did you have occasion to meet with him while you were in uniform and while wearing a yarmulke?

A. I saw him on a daily basis in uniform in a yarmulke.

Q. Did Major Young raise any question regarding your wearing a yarmulke?

A. No.

Q. Did he ever tell you that in light of Air Force Regulation 35-10 you shouldn't wear a yarmulke?

A. No.

Q. Did he ever tell you that in light of Air Force (p. 17) Regulation 35-10 there would be some question as to whether you could wear a yarmulke?

A. No.

Q. With respect to Major Gamboa when you met with her, did you have occasion to meet with her while you were wearing a yarmulke while in uniform?

A. On a daily basis.

Q. Did Major Gamboa ever raise question about your wearing of a yarmulke in light of Air Force Regulation 35-10 or otherwise?

A. No.

Q. Did you have occasion as well to meet with and talk to Colonels Murray or Parker—and/or Parker?

A. I doubt that I ever met with them. I would not normally in the course of my duties come in contact with them.

Q. When Lieutenant Colonel Justice came to be your supervisor did you meet with him on a daily basis?

A. Regularly, yes.

Q. Did he see you wearing your yarmulke while in uniform?

A. Yes.

Q. Did he ever raise question prior to, say, May of 1981 whether it was proper for you to wear a yarmulke while in uniform?

A. He reported to me that he had a conversation with (p. 18) Dr. Gregory, the hospital commander; that Dr. Gregory had took notice of my yarmulke, but that Dr. Gregory was going to let Dr. Justice deal with that. And Dr. Justice had told me that he did not intend to take any action at that time.

Q. At that time did he say anything to you about Air Force Regulation 35-10?

A. I don't recall.

Q. Do you recall when that occurred, approximately?

A. I would imagine that that occurred some time during the first few months that Dr. Justice was my supervisor.

There were a number of things going on with me and the clinic at that time, but certainly I think that was dealt with during the first two or three months.

Q. Until that time, had Colonel Gregory said anything to you about your wearing of a yarmulke?

A. Until what time?

Q. Until the time that Lieutenant Colonel Justice made reference to Colonel Gregory's comment?

A. No.

Q. But Colonel Gregory had seen you in uniform wearing a yarmulke?

A. I imagine so.

Q. From the period that you began with the Air Force until May of 1981, had any of your co-workers at the hospital or any of the hospital staff made comments to you or questioned (p. 19) you with respect to your wearing of a yarmulke?

A. One or two of my co-workers might have asked me what that was and why I was wearing it, yes.

Q. And what did you tell them?

A. I told them that I was an Orthodox Jew and that wearing a yarmulke was part of my religious observance.

Q. Did the conversation go any further beyond that?

A. One of them had asked me what was the particular significance and I explained that to them.

Q. In the course of performing your functions in the Air Force, I take it you see patients on a fairly regular basis?

A. Yes, I do.

Q. During the period of time that you've been affiliated with the Air Force, have any of your patients raised question with respect to why you are wearing a yarmulke?

A. Perhaps four, five, six patients asked me what it was and, again, I gave them a similar kind of explanation.

Q. During the course of your service at March Air Force Base, have there been periodic inspections of the base or of the hospital in particular?

A. Yes, there have been.

Q. In the course of those inspections, have you had occasion to meet with or talk to any of the inspecting officers while you were in uniform wearing a yarmulke?

(p. 20) A. Yes, at least on two occasions.

Q. On either of those occasions or at any other time with respect to any inspections that might have occurred, were you told that there was some question as to whether you were permitted to wear a yarmulke while in uniform?

A. No.

Q. There came a time, though, when you did receive some kind of an order with respect to your wearing a yarmulke, is that correct?

A. Yes.

Q. Do you recall when that was?

A. On May 8, 1981.

Q. Could you tell us briefly what occurred that day?

A. I was told to report to Dr. Gregory's office, and Dr. Justice, my supervisor, was instructed to come with

me. Dr. Gregory told me that the wing commander did not want me wearing a yarmulke anywhere on base indoors, and that Dr. Gregory was given the discretion by the wing commander as to whether or not I would be allowed to wear it in the hospital and that Dr. Gregory was going to permit me to wear the yarmulke in the hospital.

Q. In addition to Lieutenant Colonel Justice, who else was present in that meeting besides you and Dr. Gregory?

A. I don't believe anybody else was present. I don't believe so.

(p. 21) Q. Did Colonel Gregory tell you you were not permitted to wear a yarmulke outside of the hospital while in uniform at the base?

A. In other buildings on the base. Yes, he did tell me that.

Q. Did he give you a written order or an oral order?

A. It was verbal.

Q. Did Colonel Gregory explain to you his distinction or reason he was making a distinction between your appearance at the hospital with a yarmulke as to allowing it while forbidding you to wearing it in any other building on base?

A. No, he did not.

Q. Did you have an opportunity or an occasion in the course of that meeting to discuss with Colonel Gregory your view, the reasons why you wanted to wear a yarmulke?

A. I very briefly stated that wearing a yarmulke was a religious observance; that I thought that there was a

significant legal qeustion as to the validity of the order; and I informed him that I would continue wearing the yarmulke.

I thanked him for allowing me to continue wearing it in the hospital and I indicated that perhaps I should discuss this personally and directly with the wing commander to find out what's going on as far as the rest of the base.

Q. What did Colonel Gregory respond to you?

A. Colonel Gregory indicated that it wouldn't be (p. 22) necessary for me to see the wing commander; that the wing commander was letting me know through Dr. Gregory what the wing commander wanted; and that—he indicated—that if I chose to disobey the order I could be subject to a court martial.

Q. After receiving the order and after you finished that particular meeting that you were in, what did you do?

A. I sought legal counsel and I consulted with various rabbinic authorities, and I also consulted—I contacted the Staff Judge Advocate, Major Ronald Rakowsky, to try to get some more information on why this order was being given.

Q. Why did you contact other rabbinic authorities?

A. I sought confirmation of my beliefs. I anticipated that there could very well be a major legal confrontation, and so I wanted to acquire support.

Q. Did those rabbis that you consulted confirm your position that Orthodox Judaism requires or at least has as part of its observance the wearing of a yarmulke or other head covering at all times by males?

A. Yes, they did.

Q. Can you recall with whom you consulted at that time?

A. I called Rabbi Herschel Schachter, who is the Chairman of the Commission on Jewish Chaplaincy of the National Jewish Welfare Board. That organization is—I believe—the official agency accredited to the Department of Defense that (p. 23) represents the Jewish faith on matters of religious—on religious matters.

I consulted with Rabbi Bess, a member of the faculty of an advanced institute for Jewish studies in Los Angeles, and he is a rabbi that I've consulted previously on other religious matters.

I also consulted with Rabbi Meiselman who is the Academic Dean of Yeshiva University of Los Angeles, who I have consulted on religious matters previously.

Q. You also indicated that you consulted—sought to consult with—Major Rakowsky.

A. That is correct.

Q. When did you talk to him?

A. On May 8th. I called him after my meeting with Dr. Gregory and I asked him if he had obtained any information personally with regard to the nature of the wearing a yarmulke. He said no, he had not.

I asked him what kind of legal counsel he had given the wing commander, and Major Rakowsky told me that he offered the opinion to the wing commander that wearing a yarmulke is not authorized in uniform according to AFR 35-10.

I raised with Major Rakowsky my concern about the constitutional issues and told him that I could provide him with a newspaper clipping that reported a case of an active duty Air Force medical officer, I believe at Pease Air Force (p. 24) Base, that had been threatened with a court martial for wearing a yarmulke while in uniform and that matter had been resolved quietly.

I also made reference to other newspaper clippings about Federal District Court rulings in a Supreme Court case. Major Rakowsky responded that Federal District Court—the Federal Government is not necessarily required to follow a Federal District Court ruling; that a Federal District Court ruling is only good in the district in which it's given; and that the trend of litigation of the kinds of religious issues that I had been referring to have been going against the plaintiffs.

Q. Despite these conversations, you continued to wear your yarmulke at all times while in uniform?

A. Yes, I did.

Q. Did there come a time when you received a subsequent order after the May 8 order concerning your wearing of a yarmulke?

A. Yes.

Q. When was that?

A. On 23 June 1981.

Q. Would you describe for us briefly what occurred at that time?

A. I was called to Dr. Gregory's office. I met with Dr. Gregory and Colonel Julius Archie. Colonel Archie

is the (p. 25) hospital Administrator. And I was given a written order which was read to me by Dr. Gregory, ordering me to stop wearing the yarmulke in uniform, period.

MR. BUTLER: Would you mark this, please?

(Plaintiff's Exhibit No. 1 was marked for identification.)

BY MR. BUTLER:

Q. Captain Goldman, I have what has been marked for identification as Plaintiff's Exhibit No. 1. It is a document dated 23 June 1981. Can you identify that document for us?

A. Yes, I recognize it.

Q. What is it?

A. It's entitled "Subject: Violation of AFR 35-10." I am informed that wearing of the yarmulke is in violation of AFR 35-10—

Q. Is this the written notice that you are referring to that Colonel Gregory gave you at the meeting on the 23rd of June?

A. Yes.

* * *

(p. 26) Q. Is everything contained in that paragraph accurate with respect to what occurred when the document was handed to you?

A. It's incomplete.

Q. What else occurred at that time?

A. During that interview, on two separate instances, I asked to speak with Dr. Gregory about my concerns

about the order. He refused to talk with me. I told him that I thought the order was illegal, based on constitutional grounds, and he told me—he indicated that his order had the approval of the wing commander and the SAC Surgeon General, General Greendyke.

I requested permission to temporarily report for duty in civilian clothing in order to avoid a legal confrontation. On the 23rd of June at 8:00 in the morning or thereabouts, the information I had—all the information that I had available to me—was that my legal counsel was negotiating with legal counsel in Washington, and I had not been informed of any final decisions about anything, so I requested permission to report to duty temporarily in civilian clothing.

(p. 27) Q. Did Colonel Gregory allow you to do that?

A. No, he refused permission.

Q. Upon your receipt of the order, did you stop wearing your yarmulke while in uniform?

A. No, I did not.

Q. Did Colonel Gregory explain to you why he was changing his order as of the 23rd of June from what he had initially told you on the 5th (sic) of May?

A. No, he did not.

Q. To your recollection, was anyone else present at the time, other than Colonel Archie, on the 23rd of June?

A. No.

With regard to the receipt, I told Colonel Gregory and Colonel Archie that I know that there was no—I just

didn't want to sign the receipt, but I knew that it didn't matter, they would simply witness the fact that they had given it to me.

Q. After your meeting with Colonel Gregory and Colonel Archie on the 23rd of June, did you have a subsequent meeting with them with respect to the yarmulke question generally?

A. I had a meeting on the 24th in the morning. I don't recall if Colonel Archie was present for that meeting, but I had a meeting in Dr. Gregory's office with Dr. Gregory in which he told me he was ordering me to report back to his (p. 28) office at 1:00 that afternoon in uniform without a yarmulke, and if I was wearing a yarmulke in uniform at 1:00, he would give me a Letter of Reprimand.

Q. So he called you in in the morning to tell you to report back in the afternoon—

A. Yes.

Q. —in uniform without a yarmulke.

A. That's correct.

Q. Did you report back in the afternoon as he ordered you to do?

A. Yes, I was there in uniform wearing a yarmulke.

Q. Was anyone else present in the room when you reported?

A. At that meeting, Colonel Archie was present, I believe, and Major Ronald Rakowsky, the Staff Judge Advocate, was present.

Q. What occurred at that meeting?

A. Colonel Gregory gave me a written Letter of Reprimand and I believe he read its contents to me.

MR. BUTLER: Would you mark this, please, as Plaintiff's No. 2?

(Plaintiff's Exhibit No. 2 was marked for identification.)

BY MR. BUTLER:

Q. I show you what has been marked for identification (p. 29) as Plaintiff's Exhibit No. 2. Can you identify that document?

A. Yes. This is the Letter of Reprimand that I was given on the 24th of June by Dr. Gregory.

Q. Was there any discussion beyond Colonel Gregory's reading to you of the Letter of Reprimand?

A. I asked him again for permission to report temporarily for duty in civilian clothing to avoid a further legal confrontation, and that request was denied.

Q. Had you had an opportunity to determine the possibility of other kinds of sanctions that could be imposed upon you for violating the order?

A. Yes, Dr. Gregory—I had two conversations that day. It might have been in the morning or in the afternoon. He indicated that if I failed to obey that there would be further steps taken. I specifically asked him what those steps were, and he simply said "This is the first step."

On May 8th he had specifically mentioned a court martial as a possibility.

Q. What else occurred at that meeting on the 24th—the second meeting on the 24th of June?

A. I gave Colonel Gregory a letter requesting that any further processing of the Letter of Reprimand be delayed until the return of my military legal counsel on the 29th of June. After a brief consultation with Major Rakowsky, at which time I wasn't present, they indicated that they would (p. 30) comply. Actually, they said "We won't do anything for a day or two. We'll get back to you." Then the next day, I was told that they would not take any further action on the Letter of Reprimand until the 29th of June, after I had time to consult my counsel.

MR. BUTLER: Would you mark this, please, as Plaintiff's Number 3?

(Plaintiff's Exhibit No. 3 was marked for identification.)

BY MR. BUTLER:

Q. Captain Goldman, you have before you what has been marked for identification as Plaintiff's Exhibit No. 3. Is that the letter that you gave to Colonel Gregory requesting the delay of the processing of the Letter of Reprimand?

A. Yes, this is the letter.

Q. After you finished that meeting, what did you do?

A. I sought further legal counsel.

Q. Did you continue wearing your yarmulke while in uniform?

A. Yes, I did.

Q. When was the next time you met with Colonel Gregory or had some other formal meeting with Air Force personnel with respect to the yarmulke question?

A. The next day, on the 25th of June, I was called to Colonel Gregory's office. Captain Haseltine was present (p. 31) for the conversation, I believe as a witness. Colonel Gregory informed me that because of my faiiure to obey his order to obey 35-10 and because of the Letter of Reprimand, essentially because he was having trouble with me with regard to that issue, he decided to withdraw a favorable recommendation he had previously made for my application to stay on active duty for one more year. And instead, he gave me the choice either to withdraw my application, and if I did not withdraw my application, he would, that day, the 25th of June, forward to the Personnel Division a negative recommendation advising the Air Force not to extend my active duty service.

Q. What did you tell him with respect to that issue?

A. I told him that I hadn't decided what I wanted to do about submitting the application, but that perhaps he would change his mind in a month or two and I could submit it at that time, or if I decided to go ahead and submit the application, I would do so, even with his negative recommendation.

MR. BUTLER: Would you mark this, please, as Plaintiff's Number 4?

(Plaintiff's Exhibit No. 4 was marked for identification.)

BY MR. BUTLER:

* * *

(p. 34) Q. Did there come a time when you were advised that formal processing had again commenced?

A. Yes, that was on the 30th of June. I was notified of—I believe the form is Notification of Intent to file—something—Unfavorable Information File. And at that time I was given—I believe I was given three days—to submit a written rebuttal as to why or why not the Letter of Reprimand for violating 35-10 should or should not be placed in an Unfavorable Information File.

Q. What did you do after receiving notice that your Letter of Reprimand was being processed in a formal sense?

(p. 35) A. I again contacted my legal counsel and was advised to obtain leave.

Q. Did you make application?

A. I did. At the end of the work day on the 30th of June, but the paperwork couldn't be processed prior to the close of work, and I reported for duty on the 1st of July and obtained written permission to go on two days' emergency leave.

Q. When you first signed on with the Air Force, what was the length of your initial commitment?

A. Three years.

Q. That expired—

A. August 31, 1980.

Q. Why are you still in the Air Force now, then?

A. I very much enjoyed my work in the Air Force and I very much enjoyed practicing my profession in the

Air Force, and wanted an opportunity to be considered for a career appointment, therefore, I requested a one-year extension and it was granted.

Q. So you were extended from the 31st of August of 1980 to the 31st of August 1981.

A. 1 September '80.

Q. With respect to Exhibit 4, the Specified Period of Time Contract, that was an application for another year of extension, is that correct?

A. That is correct.

Q. Is that application still pending?

(p. 36) A. No. I withdrew that application after Dr. Gregory submitted the negative recommendation.

Q. What is your current date of separation from the Air Force?

A. 31 August 1981.

Q. Is it your intention to continue service in the Air Force?

A. I intend to separate from active duty on the 31st of August. I also want to continue my affiliation with the Air Force through the Air Force Reserve in their training programs.

Q. Have you made formal application for that position?

A. Yes, I have.

Q. When did you make the application?

A. I obtained the forms prior to 15 July '81. On the 15th of July, I gave to Colonel Gregory's secretary a Unit of Attachment Agreement, which is one of the—being affiliated with a unit is one of the requirements of the application process.

On the 20th of July, I mailed out to the Reserve Headquarters in Denver two of the application forms, but since I had not been provided a Unit of Attachment Agreement by them, I couldn't submit that.

Q. Was March Air Force Base the only facility to which you applied for Reserve training?

(p. 37) A. No. I also spoke on the phone with the commander of a medical clinic at Los Angeles Air Force Station about affiliating, getting training there.

Q. Did you submit a formal application there?

A. Yes, I did mail a Unit of Attachment Agreement to the commander there.

Q. I think you said you talked on the phone with him. What was the substance of that conversation?

A. I had two conversations with him. The first conversation, he expressed great interest in having my services there. He said "We sure could use you." I had been told by Headquarters in Denver that they were losing a mental health professional and would probably be able to use me there, and, in fact, that's what the commander of the medical clinic there said.

I subsequently—some time the week of July 20th—called him again because I had not received—I had sent him a carbon and asked him to return the carbon to me.

I called him again and he said he had not taken any action on my Unit of Attachment Agreement. He indicated that he had heard some rumblings about me, and that since I was a subject of controversy, he wanted legal counsel prior to taking any action on that.

Q. Did he indicate what the nature of the "rumblings" were? Any particular issue that it was addressed to?

A. No, but he didn't sound surprised when I told him (p. 38) it was with regard to my yarmulke.

The conversation I had with him was on a—the second conversation was on a Thursday. I believe it was two weeks ago. He indicated to me that he was—it might have been a Friday. It was either Thursday or Friday. It was the day before he was going on leave for a couple of weeks, and I explained to him my interest in getting that Attachment Agreement filled out, and I asked him if he would —if he could possibly get it done before he goes on leave, or give instructions to his acting commander in his absence to be able to action on my application, once legal counsel had been obtained by him.

Q. Have you received any word back from the L.A. Air Station?

A. No, I haven't. During the course of that second conversation he again, after acknowledging the rumblings and that I was a controversial figure and he wanted legal counsel, he did, nevertheless, say that he could use my services.

Q. What about your application for Unit of Attachment Agreement at March Air Force Base? Have you received anything back on that application?

A. No, I have not.

Q. Have you made any inquiry as to why you haven't received word back?

A. Yes. I made several inquiries. I inquired of the (p. 39) base legal office where it had been sent when it might be done. I inquired of the Resource Management Office where it was originally sent what was happening with it. I inquired of Colonel Archie, the Hospital Administrator, about what was happening with it.

I spoke with Colonel Slarve, who was the hospital commander while Dr. Gregory was on leave, and I spoke with him verbally on a Friday afternoon, and then on a Monday morning, the following Monday, I gave him a written request, asking Colonel Slarve to take action on my Unit of Attachment Agreement in his official capacity as the hospital commander.

Q. What response have you received with respect to those inquiries?

A. Well, with regard to Colonel Slarve—the inquiry to Colonel Slarve—Colonel Slarve said that he had talked with Colonel Gregory that day and that Colonel Gregory asked him to leave the matter alone and that Colonel Gregory would handle the matter when he returned from leave on August 10th.

Q. Why did you decide not to seek a Specified Period of Time Contract with the Air Force for another year?

A. Basically because the working environment and atmosphere in the clinic and the hospital had changed dramatically once this controversy arose.

Q. But you do want to continue serving the Air Force Reserve.

(p. 40 & 41) A. Very much so. I would like to go into the active Reserves and receive active training for promotion and retirement.

Q. During the course of your service in the Air Force, have there been occasions where you've been formally reviewed and evaluated by the Air Force?

A. Yes.

Q. Do you recall how many times you've—

A. Five times.

MR. BUTLER: Would you mark these, please, in order, 5 through 9?

(Plaintiff's Exhibits 5, 6, 7, 8, 9
were marked for identification.)

BY MR. BUTLER:

Q. Captain Goldman, you have before you what have been marked for identification as Plaintiff's Exhibits 5 through 9. Are those the five Officer Evaluation Reports that you have received during the course of your service in the Air Force?

A. Yes.

Q. Are any of those from Colonel Gregory?

A. No.

Q. You've not yet received a formal evaluation from Colonel Gregory?

A. No, not from Colonel Gregory and not from Colonel Justice.

(p. 42) Q. Do you recall whether on any of those evaluations you have been criticized or chastised for wearing a yarmulke while in uniform in violation of AFR 35-10?

A. No.

Q. Let me ask you once again, in any of these five evaluation reports, are you aware of any reference—or is there any reference—in the forms to your violation of AFR 35-10 for wearing a yarmulke while in uniform?

A. I have read all these reports, and there is no reference whatsoever to violation of AFR 35-10.

Q. In the past three evaluation reports, at least in my reading, indicates that you have been marked with the highest rating "Well above standard" in all areas regarding performance factors. Is that correct?

A. That is correct. That's what they show.

Q. And in your first two evaluations, you were marked in the majority of instances, I believe, "Well above standard" and in some other instances, the standard just below that, which is "Above standard," is that correct?

A. Yes. On the first one there were five "Well above standard" and five were "Above standard"; in the second one, seven out of ten categories were marked "Well above standard," and three were marked "Above standard."

Q. You have already indicated in response to some of my questions the nature of reaction that you received from (p. 43) commanding officers and other personnel on base, as well as civilian persons on base, to your wearing of a yarmulke from the period that you began in the Air Force until May of 1981.

Prior to the time that you filed this lawsuit in the beginning of July, was there any change in the reaction generally, other than what Colonel Gregory had told you and what you had discussed with Colonel Justice and Major Rakowsky?

A. Prior to May 8th, there was no change in the reaction that I received from people that I came in contact with on the base.

Q. I'm asking prior to July 2nd.

A. Prior to July 2nd, there was no basic change.

Q. Since the time that you have filed this lawsuit, have you received reactions from your co-workers or the staff personnel at the hospital?

A. Yes, I've received numerous reactions from people, most of which were supportive. All of which were supportive.

Q. Have you heard any comments from civilians on base with respect to your filing of this lawsuit or your wearing of the yarmulke since the filing of the lawsuit?

A. Yes, I have. They were also generally sppportive.

Q. Has anyone told you, since the time you've been affiliated with the Air Force until today—anyone at the Air Force—given you any indication that your wearing of a yarmulke somehow interferes with the *esprit de corps* of the (p. 44) Air Force?

A. No one has ever made that kind of remark to me.

Q. Has anyone told you that your wearing of a yarmulke has an effect on the ability of the Air Force to maintain discipline within its ranks?

A. Other than Colonel Gregory in a written remark, no.

Q. Have you got any basis upon which to make a judgment, or has anyone told you that your wearing of a yarmulke somehow affects the public's perception of an airman?

A. No one has ever made that kind of remark to me.

MR. BUTLER: I've got nothing further at this time.

MR. LAWRENCE: I would suggest a brief recess before we resume with cross-examination.

THE WITNESS: Good idea.

(Ten-minute recess taken.)

CROSS-EXAMINATION

MR. LAWRENCE: Captain Goldman, I'm Craig Lawrence; I am an Assistant U. S. Attorney; I represent the Government in this action, and with me are Major Moran and Captain Fiscus from the Air Force.

BY MR. LAWRENCE:

Q. You indicated in your direct testimony that, I believe it was immediately upon graduating and obtaining your—correct me if I'm misstating the term—rabbinical degree, you began a career in the Navy as a chaplain. Is that correct?

(p. 45) A. Yes, it is.

Q. You were in the Navy, then, from 1970 to 1972.

A. Yes.

Q. During that period of time, what, generally, were your duties as a rabbi in the Navy?

A. I provided religious services, educational services, cultural services.

Q. Did you maintain a Jewish congregation where you were stationed?

A. There was a very, very small Jewish congregation. Most of my activities were of a general chaplain's nature.

Q. Were the individuals in your congregation, then, active duty military, or did they include civilians?

A. They included dependents of active duty.

Q. Did they also include active duty personnel?

A. Yes.

Q. Were there both enlisted and officer personnel?

A. Yes.

Q. During this period in the Navy, in your contact with the active duty Navy personnel, were the members of your congregation—the male members of your congregation—wearing yarmulkes?

A. At religious services they were, yes.

Q. Were they wearing yarmulkes at times apart from your religious services?

(p. 46) A. Occasionally when I saw them at their duty station—at their place of duty—I didn't see them wearing a yarmulke.

Q. You left the Navy in August of '72, is that correct?

A. Yes.

Q. For what reason did you leave the Navy?

A. I completed my obligated tour of duty, and during my two years there I had developed a great interest in counseling, because that was a large part of what I did to the general military population there, and I wanted to get more professional training in counseling.

Q. Did you seek to stay on active duty in the Navy?

A. I did not submit any application to stay on active duty in the Navy.

Q. Did you request an ecclesiastical endorsement prior to your departure from the Navy?

A. I made no formal request for ecclesiastical endorsement.

Q. Was there any action taken on your ecclesiastical endorsement while you were in the Navy or before you left?

A. There was no action taken on my initial ecclesiastical endorsement.

Q. Was there any subsequent ecclesiastical endorsement request made or acted on?

A. I never made any formal request for a second ecclesiastical endorsement.

(p. 47) Q. Do you know whether one was submitted —I'm not sure how this works. How does it work? Maybe that's a better initial question.

A. I'm not sure how it worked either.

Q. We're in the same boat.

Were you ever denied an ecclesiastical endorsement?

A. Well, if I never submitted a formal request for ecclesiastical endorsement, I guess I couldn't be formally denied one.

Q. Were you or were you not, or do you know, ever denied ecclesiastical endorsement?

MR. BUTLER: He's answered. He never submitted a second formal request and he's not aware of it ever being denied in formal sense either.

MR. LAWRENCE: He said "if" he never requested a formal—

THE WITNESS: Well, I never requested a formal endorsement.

BY MR. LAWRENCE:

Q. That's correct. Now the question is were you ever denied an ecclesiastical endorsement?

A. I was never denied a formal ecclesiastical endorsement.

Q. You applied for the Air Force, as I understand it, in September of '72, correct?

(p. 48) A. No, I applied several months before then. In the spring or possibly the first quarter of 19—

the first quarter of 1973 was when I applied for the Air Force.

Q. You then did not apply until after you had already left the Navy, is that correct?

A. That is correct. It was during the period that I was serving as a rabbi in Mt. Clemens, Michigan that I made the application procedure.

Q. How long after you had made the application did you hear?

A. I don't know. Approximately two, three months. I believe I was notified some time around April or May of 1973 that I had been accepted into the program.

Q. Then you began your schooling in September or the fall of that year?

A. September of '73, that is correct.

Q. During your application, were you obliged to commit yourself to a certain amount of active duty time in return for—what is it? a scholarship? Is that what that—

A. It was the Health Professions Scholarship Program and the basic obligation was for three years of support, one would have three years of obligated service.

Q. Three years of active duty service would be the return.

A. Yes, uh-huh.

(p. 49) Q. Was that for the completion of any particular program or was that a sliding scale for your particular program? That is, if you wanted to, let's say, go into an M.D. program, would it be a greater commitment?

A. I have no idea about M.D. regulations.

Q. Prior to your acceptance into the program, did you have any interviews or conversations with any active duty Air Force personnel about the program?

A. I had a telephone conversation with Colonel Levinson, I believe was his name, and he was I believe at that time the senior psychologist or Chief of Psychology for the Air Force, and I contacted him about the application procedure.

Q. Did you have any orientation materials or booklets sent to you about life in the Air Force along in that period of time?

A. I believe there were some information pamphlets sent to me during—after I had signed on with the Health Professions Scholarship Program. Materials were occasionally sent to me.

Q. This was after acceptance into the program?

A. Yes, that's correct.

Q. Did you perform any active duty while you were going through your schooling as part of the program?

A. I had three 45-day tours of active duty. These active duty tours were performed at my university.

(p. 50) Q. Did you—were you required to wear a uniform or do anything which would distinguish you as an Air Force officer or a program person during those 45-day tours of duty?

A. Absolutely not.

Q. Were these, then, part of your education, or were these more—were they duty-oriented or education-oriented or both?

A. It was education-oriented. Basically, the way it was explained to me is that I needed those 45-day periods to continue my education so that I could complete my degree on schedule, then the Air Force would not require me to report for active duty at an Air Force base, but that if my educational requirements did not require me to keep busy with school during those 45-day periods of time, I would report for duty at an Air Force base.

Each time that my 45-day tour of active duty came up, I was granted permission by the Air Force to continue my schooling at school.

Q. So the Air Force accommodated your 45-day tours and allowed you to take them at the university rather—

A. That is correct.

Q. The other requirement would have been performance of this 45-days of active duty at a, I presume, a hospital somewhere?

A. Wherever they would send me.

(p. 51) Q. When was the first occasion that you appeared anywhere in an Air Force uniform?

A. It was at March Air Force Base, some time in middle to probably late September of 1977.

Q. This was after you had formally entered on active duty?

A. That is correct.

Q. During your initial processing at March Air Force Base, the people who were working with you, processing, were predominantly—strike that.

The people who were initiating your processing were all enlisted, were they not?

A. I would say predominantly, yes.

I should mention that I was assigned a sponsor which is a standard procedure in the base "intro" program and that was a captain assigned to the mental health clinic. He was my official sponsor to help me get oriented.

Q. How were you dressed when you were processing in at March Air Force Base?

A. I was dressed in civilian clothes because I had no opportunity prior to then to acquire military uniforms.

Q. So your first appearance in a uniform was not until you had completed inprocessing, is that correct?

A. My first appearance in uniform was not until I had managed to purchase military uniforms, but I believe I was in (p. 52) uniform for part of the mandatory in-processing.

* * *

(p. 53) Q. During your period at March Air Force Base, did you come in contact with other, either members of the profession, or enlisted people who were working at March Air Force Base at the hospital who were Jewish?

A. During which period of time?

Q. During the time that you were assigned to active duty at March Air Force Base.

(p. 54) A. Yes, I have met a few Jewish personnel assigned to March.

Q. Are any assigned to the hospital?

A. Yes.

Q. How many, roughly?

A. I can think clearly of two people. One is a woman. The other is Dr. Slarve. There may have been one or two others.

Q. Dr. Slarve is the individual who you mentioned is currently the acting—

A. Hospital Commander.

Q. —hospital commander?

A. Yes.

Q. Does Dr. Slarve wear a yarmulke?

A. No, he does not.

Q. I'm speaking about only the time that you have come in contact with him at the hospital.

A. Dr. Slarve indicated to me in a recent conversation that he practices his religion differently than I do.

Q. But other than Dr. Slarve and the woman you indicated, have you come in contact with any other Jewish officials at the—

A. I was visited by the Jewish lay leader when I was hospitalized at the hospital.

Q. You say "lay leader." Was he an Air Force official? That is, would he be a chaplain?

(p. 55) A. No, he was not a chaplain. I was visited by a Jewish lay leader. He is an active duty enlisted person. Your mentioning a chaplain, I have been visited occasionally by a Reserve chaplain who was getting Air Force Reserve training at the base.

Q. With respect to the lay leader, you said he was active duty enlisted?

A. Yes, that's correct.

Q. Did he wear a yarmulke?

A. No, he did not.

Q. Was he in uniform?

A. Yes.

Q. I'd like to touch on a few other points as we move on through. I notice, Captain Goldman, that you don't wear a beard. Is not a beard a part of the tradition for Jewish rabbis?

A. Wearing a beard is a tradition for some rabbis, yes, but I know of many rabbis who don't wear a beard, including my father who was an Orthodox rabbi. He never wore a beard.

Q. Is there not a certain tradition with regard to destroying the beard, or I believe there was some comment somewhere about "rounding the corners of the face"?

A. Yes, there is, but there are various interpretations of that verse in the Bible. One of the basic points in interpreting the Bible is never to do so solely on the basis (p. 56) of the literal text alone.

Q. But it would be in keeping with traditional practices for rabbis to wear beards—certain rabbis to wear a beard?

A. It would be in keeping with traditional practice for anyone to wear a beard, and it would not be in violation of any religious requirement not to wear a beard.

Q. We're getting into an area that I'm afraid I'm a little bit short of knowledge on and I'm going to have to ask you to help me a little bit. We talked about—and I believe some of the papers that you have filed talk about—a requirement and a tradition.

Is there not a distinction within the Jewish religious teachings between a requirement and a tradition?

MR. BUTLER: I take it you are asking Captain Goldman for his understanding of these observances.

MR. LAWRENCE: Yes.

THE WITNESS: There are numerous and different gradations of requirements. It's a highly complex subject and I do not consider myself an authority to give you an authoritative answer as to the distinctions.

I can mention, if you wish, about six different variations right now if you'd like.

BY MR. LAWRENCE:

Q. Okay. Just briefly. I don't want to obviously take up too much of your time on this.

(p. 57) A. Well, there are Biblical requirements of Biblical force. There are rabbinic enactments related to Biblical requirements of Biblical force. There are rabbinic enactments regarding Biblical enactments of rab-

binic force. There are various kinds of rabbinic enactments, some of which have Biblical force and some of which have rabbinic force. And then there are customs, traditions, so forth, that are in force. So it's a highly complex field.

Q. Let's take an example of going back to the wearing, for example, of the yarmulke. Does it affect, in a religious practice sense, whether, for example, the lay leader with whom you spoke—the active duty enlisted man who did not wear a yarmulke—is there any lack of indication of his faith by the fact that he did not wear a yarmulke at all times?

A. I don't know what the man's degree of faith is. I can tell you that there are devout Reform Jews who do not believe in wearing a yarmulke.

Q. What about—are there other Orthodox practitioners such as—I am speaking now of your own particular general sect, if you will, who do not wear yarmulkes?

A. Yes.

Q. Is it then a matter, in part, tied to the personal beliefs of the individual?

A. Can you elaborate on what types of "personal beliefs of the individual" means?

(p. 58) Q. I'm afraid I'm a little bit at a loss. My tradition and background is different from yours, and I am trying to understand to a degree the distinction between, let's say, the group of Orthodox practioners of the Jewish faith who wear a yarmulke and those who do not.

MR. BUTLER: I'm sorry. Would you repeat the question?

BY MR. LAWRENCE:

Q. Okay. I'm not sure I can go back—the question I have is, generally, is there a different, let's say, status or—strike that.

I think what I was getting at was whether the determination of the individual who is a practicing member of the Orthodox sect—for want of a better term—is it a personal determination of the individual to wear a yarmulke or not?

MR. BUTLER: You have the right to ask Captain Goldman what his particular practices are. Captain Goldman has already indicated he doesn't consider himself an expert in all of these areas, and I'm not sure that he's qualified to repond on behalf of other people.

To the extent that Captain Goldman's practice is in issue in this litigation, you are entitled to ask him about his practice.

MR. LAWRENCE: But my understanding from the (p. 59) discussion of his background was that he was ordained a rabbi, and certainly, all I'm asking is to the extent of his religious training and background whether he can make that—

MR. BUTLER: He certainly is a rabbi, and just as you and I are lawyers, we're not well-versed, necessarily, on patent law. I'm not saying that Captain Goldman is versed in this particular area or not. He has indicated to you he doesn't consider himself an expert in these areas.

You are entitled to ask him about what his belief is and the nature of his practice.

MR. LAWRENCE: I would like to get a little more general to understand it a little better myself. I mean we're obviously in an area where Captain Goldman has indicated that some members of the Orthodox Jewish faith do not wear yarmulkes and I am trying to find out how that distinction is made on an individual basis; whether it's a matter of personal belief, and take it from there.

MR. BUTLER: To the extent Captain Goldman feels he's qualified to speak for reasons that others practice their religion in a different or some fashion, I have no objection to him answering it, but I want it to be clear on the record that this witness has not indicated that he is an expert and that my belief is he can only testify as to what he knows with respect to his own practice.

THE WITNESS: I wear a yarmulke because it's a (p. 60) religious observance—a traditional religious observance.

BY MR. LAWRENCE:

Q. What about those members of the Orthodox faith who do not?

A. I can't account for their behavior.

Q. In the Orthodox faith, are they considered to be less—for want of a better term—holy than those who do wear yarmulkes?

MR. BUTLER: By whose standards? By what judgment? That question isn't clear enough.

MR. LAWRENCE: By the judgment of, let's say, the theological authorities that you studied when you were in Yeshiva University.

THE WITNESS: Again, I would reiterate that I don't consider myself an expert on these matters, but I would simply say that within Orthodox Judaism, which is one of several denominations of Judaism, there are many variations of attitude and belief with regard to numerous traditions, practices, customs, obligations, and within those viewpoints or attitudes there are different gradations.

So I think it's quite possible that there can be many Orthodox Jews who are devout and committed to their religion who do not see it as necessary to wear a yarmulke when they go to work.

MR. LAWRENCE: "Devout," I think, is the term I was (p. 61) looking for. Thank you.

BY MR. LAWRENCE:

Q. Do you have a congregation now, Captain Goldman?

A. No, I do not.

Q. Do you attend daily services?

A. I pray three times a day privately, and I go to the synagogue on Sabbath and holidays.

Q. Is not attending daily services part of a tradition, if you will, of the Orthodox Jewish faith as you understand it?

A. There is a tradition to attend public services if possible, and there is a requirement to pray each day.

Q. Where is the synagogue which you attend on the Sabbath?

A. It's about a mile from my home.

Q. Does the synagogue have daily services?

A. The synagogue has three daily services. Due to my work schedule, I cannot attend.

Q. What is your work schedule at March Air Force Base?

A. I work there from 7:30 to 4:30.

Q. How far is—you indicated that you live in, I believe, Los Angeles and work at March. How far is that?

A. It's about 74 or 72 miles.

Q. How long a daily commute does that—not "daily," one-way commute?

A. About an hour-and-a-half.

(p. 62) Q. Do you keep a kosher household?

A. Yes.

• • •

(p. 63) Q. Do you wear a prayer shawl at all times?

A. No, I wear a prayer shawl at morning prayer services.

Q. Is it not a tradition of the Orthodox Jewish faith that maintains that it is appropriate to wear a prayer shawl at all times, even under one's clothes?

A. That is not a prayer shawl.

Q. I beg your—what is that?

A. Oh, how do I translate it into English? It is "fringes." We call it that. "Fringes."

Q. Fringes?

A. Yes.

Q. Do you wear that at all times? Do you wear fringes?

A. I wear that during the day when it is traditional to wear it. Under my clothing.

Q. But it is not, then, traditional to wear that at all times.

A. It is not required to wear it in the evening.

Q. And do you wear it at all times during the day while you are on duty?

A. Yes.

Q. Is what you're speaking of an *arba kanfot?*

A. That's one of the names, *arba kanfot,* yes. That's Hebrew for four corners.

Q. So that is the fringes that we—

A. Yes, that's the fringes that I'm referring to.

(p. 64) Q. I assume, Captain Goldman, and from your discussions I think it's fairly clear that you maintain the Sabbath—your Sabbath.

A. Yes, that's true.

Q. Have you received permission from the Air Force to depart work early on Friday afternoons in order to maintain your practices—your Sabbath?

A. I did for a period of about three-and-a-half years have permission to do that, and when I was told to remain at work until 4:30 on Friday, I complied.

Q. When you were told to remain at work?

A. I would say it was some time after the yarmulke issue arose. Whether it was May—late May or early June, I don't recall.

* * *

Q. Captain Goldman, when you began your Air Force career—after you began your Air Force career—when was the first time you became acquainted with Air Force Regulation 35-10 and the requirements for uniformity and its application to the yarmulke?

A. Some time after May 8, 1981.

(p. 65) Q. That was your first inkling that wearing the yarmulke or first indication of any kind that wearing a yarmulke might be inconsistent with AFR 35-10.

MR. BUTLER: Are you asking the question apart from Colonel Gregory's instructions—

MR. LAWRENCE: Yes.

MR. BUTLER: —instructions to him on the 8th of May.

MR. LAWRENCE: Yes.

BY MR. LAWRENCE:

Q. Apart from Colonel Gregory's instructions on the 8th of May—

A. Yes.

Q. Were you ever at any time prior to that point given any indication that the AFR 35-10 precluded the wearing of a yarmulke?

A. Not that I can recall, no.

Q. When was the first occasion on which you requested permission to continue to wear the yarmulke?

A. On the 8th of May 1981.

Q. Did you ever inquire of anyone about the wearing of the yarmulke prior to May 8th 1981 while in uniform?

A. Inasmuch as my supervisors and hospital commanders saw me frequently wearing it, I didn't see any need to inquire about it.

(p. 66) Q. Do you know Air Force Chief Master Sergeant Johnson?

A. No, I do not. I don't recognize the name.

MR. BUTLER: Do you have a first name of this man?

MR. LAWRENCE: He was Chief of Nursing, as I understand it, at March Air Force Base for a period of time.

THE WITNESS: I don't recognize the name. I never had any professional or personal dealings with the man.

I'm not a very well-known person in the hospital. I generally stay in the clinic and do my work and go home. A lot of people have said "Oh, when did you arrive?" "About two or three, a year ago, three-and-a-half years ago."

BY MR. LAWRENCE:

Q. You are unaware, then, that any complaints may have been voiced by Chief Master Sergeant Johnson or any others?

A. That's correct. This is the first time I'm hearing about it.

MR. BUTLER: Do you have a first name for him?

MAJOR MORAN: George.

MR. LAWRENCE: George.

MR. BUTLER: Do you know anything about where he is presently?

MR. LAWRENCE: I'm not sure where he is presently. I think we can get into that.

MR. BUTLER: Yes, that's fine.

MAJOR MORAN: You'll probably get it in the (p. 67) interrogatories.

MR. LAWRENCE: I have no further questions.

MR. BUTLER: I have just a couple to follow up on some of the things that Mr. Lawrence had inquired concerning—

REDIRECT EXAMINATION

BY MR. BUTLER:

Q. With respect to your early departures on Fridays, you indicated that since some time after May of this year you've been staying until 4:30. Are you still able to get home in the summertime before Sabbath begins?

A. Yes, I am.

Q. Then the major problem would be in the wintertime when the sun sets earlier?

A. Yes, the major problem would be when the Sabbath starts about 4:15, 4:20.

Q. You're wearing a yarmulke right now.

A. Uh-huh.

Q. Is that substantially similar to the kinds of yarmulke or the kind of yarmulke that you wore in the past or have worn in the past while in uniform at March?

A. It's similar in size and it's a single color. Right now it's brown. Before it was dark blue or a black.

Q. Do you by any chance know the measurements of that yarmulke?

A. It's about five-and-a-half inches in diameter.

* * *

PLAINTIFF'S DEPOSITION EXHIBIT 1

DEPARTMENT OF THE AIR FORCE
Headquarters United States Air Force Regional Hospital
(SAC)
March Air Force Base, CA 92518

(Received June 26, 1981)

(SEAL)

REPLY TO ATTN. OF: SG/Stop 28

SUBJECT: Violation of AFR 35-10

TO: Captain S. Simcha Goldman/SGHMA

You are hereby informed that the wearing of the yarmulke is in violation of AFR 35-10, and you are ordered to refrain from wearing the yarmulke while in uniform.

/s/ Joseph E. Gregory
JOSEPH E. GREGORY, Colonel, USAF, MC
Commander

1st Ind/USAFRH/SGHMA

TO: USAFRH/SG

I acknowledge receipt of the above order on 23 June 81.

S. SIMCHA GOLDMAN, Capt, USAF, BSC
SSN 349-38-6833FV

2d Ind/USAFRH/SG 23 Jun 81

At 0915 hours, 23 June 1981, witnessed by Colonel Julius C. Archie, I gave Captain S. Simcha Goldman orders that the wearing of the yarmulke was in violation of AFR 35-10 and that he should refrain from wearing it with the uniform. He refused to sign acknowledgement of receiving the order and stated that he would not comply and that he would take this up with the press.

/s/ Joseph E. Gregory
JOSEPH E. GREGORY, Colonel, USAF, MC Commander

/s/ Julius C. Archie
Witness: JULIUS C. ARCHIE, Col, USAF, MS Administrator

Peace .... is our Profession

PLAINTIFF'S DEPOSITION EXHIBIT 2

DEPARTMENT OF THE AIR FORCE
Headquarters 220 Comsat Support Group SAC
March Air Force Base, CA 92518

(Received June 26, 1981)

(SEAL)

REPLY TO ATTN OF: CC

SUBJECT: Letter of Reprimand

TO: Captain S. Simcha Goldman

1. On 23 and 24 June 1981, you violated AFR 35-10 by wearing a yarmulke while in uniform. You were informed by the undersigned on 23 June both orally and in writing that such wear was in violation of AFR 35-10. I then told you to insure that you comply with AFR 35-10 and do not continue to wear the yarmulke in uniform.

2. You are hereby reprimanded for your misconduct. Your actions represent a flouting of military authority and will not be tolerated. I strongly recommend that you reevaluate your past conduct and take immediate steps to conform your behavior and performance to Air Force Standards.

/s/ Joseph E. Gregory

JOSEPH E. GREGORY, Colonel, USAF
Commander

PLAINTIFF'S DEPOSITION EXHIBIT 3

(Received June 26, 1981)

24 June 1981

Reply to Attn
Of: S. Simcha Goldman, Captain, USAF

Subject: Letter of Reprimand

To: USAF Hospital/CC

I respectfully request that the initiation of the Letter of Reprimand and any proceedings or action pursuant to it be delayed until 29 June 1981. The reason for this request is that my Attorney Captain Rex Hinesley is on leave and will not be back until 29 June 1981. I specifically request that he be present during the initiation of this Letter of Reprimand as I have already formed an attorney client relationship with him. Thank you for your consideration in this matter.

/s/ S. Simcha Goldman

S. SIMCHA GOLDMAN, Captain, USAF

PLAINTIFF'S DEPOSITION EXHIBIT 4

SPECIFIED PERIOD OF TIME CONTRACT (SPTC)
AUTHORITY: 10 U.S.C. 8012 and EO 9397.

PRINCIPAL PURPOSE: To enable you to apply for an extension of your date of separation by means of a Specified Period of Time Contract.

ROUTINE USES: Used by the approval authority to determine your eligibility for extension of your date of separation. Use of your SSAN is necessary to make positive identification of you and your records.

DISCLOSURE IS VOLUNTARY: Failure to provide the necessary information would result in your not being considered for extension of your date of separation. Failure to provide your SSAN would make it difficult to identify you and your records in processing the SPTC.

I. APPLICATION

1. TO:
   USAF Regional Hospital/SG, March AFB, CA
2. FROM: USAF Regional Hospital/SGHMA
   March AFB, CA 92518
3. DATE 11 May 1981
4. DAFSC 9186
5. SSAN 349-38-6833
6. CURRENT DOS 31 August 1981
7. In accordance with AFR 36-94, I request that my current DOS be extended to 31 August 1982 for the following reasons:

To have the opportunity to be considered for a Career Reserve appointment. Unforeseen circumstances prevented me from applying to the Career Reserve selection boards in November 1980 and April 1981. In August 1980, I had thyroid surgery. Post operative diagnosis was papillary

thyroid carcinoma. Three months of treatment by a nuclear medicine specialist followed. On 24 November 1980, I was found fit for active duty by an informal PEB and was notified of these results in December 1980 (see atch 1). An application to the November board could not be submitted prior to the PEB results. Moreover, since surgery, I have gone through an extended period of both objective and subjective distress with regard to my health. The discovery of cancer prompted a prolonged and serious evaluation of my life goals. This self-examination has extended beyond the deadline for submitting an application to the April 81 selection board.

8. I have not established a DOS under the 7-day option policy.

9. I have not declined Indefinite Reserve status or a Regular Air Force appointment.

10. I understand and agree to the following:

    a. This SPTC is subject to approval or disapproval by the designated authority in AFR 36-94. My current DOS may be extended until final action on this SPTC is taken by the designated authority.

    b. I may not withdraw or change this SPTC after it has been approved by the designated authority except as authorized in AFR 36-94.

    c. I accept the obligation to serve on active duty for the period of this SPTC, even though such period may exceed an active duty service commitment incurred by me under AFR 36-51.

    d. When required by law or policy, I may be involuntarily separated before the expiration of this SPTC.

11. TYPED NAME AND GRADE S. SIMCHA GOLDMAN, Captain

12. SIGNATURE /s/ S. Simcha Goldman

II. IMMEDIATE COMMANDER INDORSEMENT

13. TO: Hq SAC/SG, Offutt AFB, NE 68113

14. FROM: USAF Rgn Hosp/SG, March AFB, CA 92518

15. DATE 13 May 1981

16. RECOMMEND [X] APPROVAL [XX] DISAPPROVAL *See attachment 2

17. JUSTIFICATION I concur and support Captain Goldman's application for a new Specified Period of Time Contract. He has been an asset to our staff.

18. TYPED NAME, GRADE AND TITLE
JOSEPH E. GREGORY, Colonel, USAF, MC
Commander

19. SIGNATURE /s/ Joseph E. Gregory

III. ADDITIONAL INDORSEMENT (*When required*)

20. TO:

21. FROM

22. DATE

23. RECOMMEND [ ] APPROVAL
[ ] DISAPPROVAL

24. JUSTIFICATION

25. TYPED NAME, GRADE AND TITLE

26. SIGNATURE

IV. APPROVAL/DISAPPROVAL AUTHORITY

27. TO:

28. FROM:

29. DATE

30. FINAL ACTION [ ]APPROVED
[ ] DISAPPROVED

31. REASON FOR DISAPPROVAL

Attachment to AF Form 233—SPTC/Captain S. Simcha Goldman SSN 349-38-6833

Since 13 May 1981, a Letter of Reprimand for failure to follow an order has been added to Captain Goldman's Unfavorable Information File which had been generated by an OSI Investigation of AFR 30-30 violation. With a change in his general attitude, and because of this progression of events, I do not feel that Captain Goldman's continuation in the service is of any value to the United States Air Force. I, therefore, recommend disapproval of his request for extension of SPTC.

/s/ Joseph E. Gregory

JOSEPH E. GREGORY, Colonel, USAF, MC
Hospital Commander

PLAINTIFF'S DEPOSITION EXHIBIT 6

I. RATEE IDENTIFICATION DATA

(Read AFR 36-10 carefully before filling in any item)

1. NAME *(Last, First, Middle Initial)*
GOLDMAN, SIMCHA S.

2. Organization, Command, Location, PAS Code USAF Regional Hospital (SAC) March AFB, CA MDOSFD NY

3. SSN *(Include suffix)* 349-38-6833FV

4. PAFSC 9186

5. DAFSC 9186

6. ACTIVE DUTY GRADE Cpt

7. PERMANENT GRADE Cpt

8. PERIOD OF REPORT
FROM: 20 Jan 78
THRU: 19 Jan 79

9. DAYS OF SUPERVISION 365

10. REASON FOR REPORT Annual

II. JOB DESCRIPTION 1. DUTY TITLE: RGN HOSP, Clinical Psychologist

2. KEY DUTIES, TASKS AND RESPONSIBILITIES: Performs outpatient evaluations (self referrals, squadron referrals, legal evaluations, Temporary Disability Retirement List evaluations, security clearance evaluations), outpatient treatment, psychometric testing and interpretations, inpatient evaluation and treatment. Supervision of staff members, consultation to other health care practitioners.

III. PERFORMANCE FACTORS

1. *Specific example of performance required*

1. JOB KNOWLEDGE *(Depth, currency, breadth)*

Not Observed or Not Relevant; Far Below Standard [ ]; Below Standard [ ]; Meets Standard [ ]; Above Standard [ ]; Well Above Standard [X]

Eagerly pursues new knowledge and continually adds to his repertories of skills and information. Demonstrates broad range of skill and expertise in dealing with patients.

2. JUDGMENT AND DECISIONS *(Consistent, accurate, effective)*

Not Observed or Not Relevant; Far Below Standard [ ]; Below Standard [ ]; Meets Standard [ ]; Above Standard [ ]; Well Above Standard [X]

Has demonstrated an appropriate balance of independence and willingness to consult. Makes prompt and correct decisions under any circumstances. He is respected for his judgment and reliability.

3. PLAN AND ORGANIZE WORK *(Timely, creative)*
Not Observed or Not Relevant; Far Below Standard [ ]; Below Standard [ ]; Meets Standard [ ]; Above Standard [X]; Well Above Standard [ ]

He sets priorities with appropriate flexibility. He organizes daily work in an efficient manner. He provides patients with enough time to identify their problems. He demonstrates both high level productivity and creativity.

4. MANAGEMENT OF RESOURCES *(Manpower and material)*

Not Observed or Not Relevant; Far Below Standard [ ]; Below Standard [ ]; Meets Standard [ ]; Above Standard [ ]; Well Above Standard [X]

His judgment and zeal in this area have been valuable assets. Capt. Goldman demonstrates remarkable competence at resource management and maximally efficient utilization of manpower.

5. LEADERSHIP *(Initiative, accept responsibility)*

Not Observed or Not Relevant; Far Below Standard [ ]; Below Standard [ ]; Meets Standard [ ]; Above Standard [X]; Well Above Standard [ ]

Has gone beyond expectations to provide training for other staff members. He unhesitatingly experiments with change, leads in innovation, offers new services to the military community, demonstrates sound judgment and foresight.

6. ADAPTABILITY TO STRESS *(Stable, flexible, dependable)*

Not Observed or Not Relevant; Far Below Standard [ ]; Below Standard [ ]; Meets Standard [ ]; Above Standard [ ]; Well Above Standard [X]

Demonstrates extreme competence in managing emergency situations, has a calming effect on violent patients, successfully provides long hours of consultations and personal involvement. He deals effectively with stressful and dangerous situations.

7. ORAL COMMUNICATION *(Clear, concise, confident)*

Not Observed or Not Relevant; Far Below Standard [ ]; Below Standard [ ]; Meets Standard [ ]; Above Standard [X]; Well Above Standard [ ]

Capt. Goldman speaks in easy to understand terms. His patients feel at ease with him as he talks to them in calm and concerned manner. He demonstrates a remarkable combination of assertiveness and confidence, yet gentleness and support.

8. WRITTEN COMMUNICATION *(Clear, concise, organized)*

Not Observed or Not Relevant; Far Below Standard [ ]; Below Standard [ ]; Meets Standard [ ]; Above Standard [ ]; Well Above Standard [X]

Effectively conveys needed information while preserving confidentiality. His ideas are expressed in a concise, com-

prehensive manner. He possesses an ability to express his thoughts in written form.

9. PROFESSIONAL QUALITIES *(Attitude, dress, cooperation, bearing)*

Not Observed or Not Relevant; Far Below Standard [ ]; Below Standard [ ]; Meets Standard [ ]; Above Standard [ ]; Well Above Standard [X]

Is highly respected for congenial attitude toward all personnel. He displays courtesy and respect toward patients, subordinates, and peers. He maintains appropriate military dress and bearing and the highest standards of professional ethics.

10. HUMAN RELATIONS *(Equal opportunity participation sensitivity)*

Not Observed or Not Relevant; Far Below Standard [ ]; Below Standard [ ]; Meets Standard [ ]; Above Standard [ ]; Well Above Standard [X]

He actively supports equal opportunity programs. Is insightful and keenly aware of the pertinent issues. He is alert to problems and concerns pertaining to these issues which are presented by his associates and clientele.

IV. RECOMMENDED ASSIGNMENT INFORMATION

1. STRONGEST QUALIFICATION: Professional competence

2. SUGGESTED JOB ASSIGNMENT *(Include AFSC)*: Staff psychologist 9181

3. ORGANIZATION LEVEL: Regional Hospital

4. TIMING: 1979

V. EVALUATION OF POTENTIAL

Indicate your rating by placing an "X" in the designated portion of the appropriate block.

Lowest					*Highest*
[X[	[X[	[X]			
[ ][ ][ ]		[ ][ ][ ]			
Rater;	Addn Rater;	Indsr			
[ ][ ][ ]		[ ][ ][ ]			
Rater;	Addn Rater;	Indsr			
[ ][ ][ ]		[ ][ ][ ]			
Rater;	Addn Rater;	Indsr			

If Report is Abbreviated, "X" Appropriate Block

[ ] Report Closes Outside Cycle

[ ] Ratee Selected for Promotion

[ ] Ratee Retires/Separates Within 4 Months

[ ] Late to Reviewer [ ] Other *(Rater explain)*

VI. RATER COMMENTS

Capt. Goldman is a reliable and responsible officer whose productivity, cooperativeness, and creativity are clearly seen in his daily performance of duty. He has consistently demonstrated sincere concern for all patients as well as insight, compassion, talent, and sound judgment. He provides the highest quality service to patients in difficult psychiatric cases. He is obviously an asset to this department and to the hospital. He displays an extraordinary knowledge in his field coupled with confidence.

NAME, GRADE, BRANCH OF SVC, ORGN, LOCATION
FRANK R. YOUNG, Maj, USAF
USAF Regional Hospital (SAC)
March AFB, CA

DUTY TITLE RGN HOSP
Chief Mental Health Services

DATE 19 Jan 79

SSN *(Include suffix)* 465-74-2998FV

SIGNATURE /s/ Frank R. Young

VII. ADDITIONAL RATER COMMENTS

[X] CONCUR [ ] NONCONCUR

His maturity and integrity as a clinical psychologist are impressive. His pleasant and cooperative attitude is refreshing. He is a valuable member of our staff.

NAME, GRADE, BRANCH OF SVC, ORGN, LOCATION
WILLIAM E. MURRAY, Lt Col, USAF
USAF Regional Hospital (SAC)
March AFB, CA

DUTY TITLE RGN HOSP
Chairman Dept of Medicine

DATE 19 Jan 79

SSN *(Include suffix)* 240-32-5956FV

SIGNATURE

VII. INDORSER COMMENTS

[X] CONCUR [ ] NONCONCUR

Capt. Goldman's contribution to this hospital and the Air Force is well documented in this report. I am in complete agreement with this evaluation.

REVIEW GROUP SIZE

NO. OF (1S), (2S), (3S), (4S), (5S), (6S)

NAME, GRADE, BRANCH OF SVC, ORGN, LOCATION
LAWRENCE R. SMITH, Col, USAF
USAF Regional Hospital (SAC)
March AFB, CA

DUTY TITLE RGN HOSP, Commander

DATE 19 Jan 79

SSN *(Include suffix)* 056-32-8225FR

SIGNATURE

PLAINTIFF'S DEPOSITION EXHIBIT 9

I. RATEE IDENTIFICATION DATA

1. NAME *(Last, First, Middle Initial)*
Goldman, S. Simcha

2. SSAN *(Include Suffix)* 349-38-6833FV

3. GRADE Captain

4. DAFSC 9186

5. ORGANIZATION, COMMAND, LOCATION
USAF Regional Hospital (SAC), March AFB, CA

6. PAS CODE MDOSFDNY

7. PERIOD OF REPORT
FROM: 1 May 80 THRU: 15 Sep 80

8. NO. DAYS OF SUPERVISION 138

9. REASON FOR REPORT CRO

II. JOB DESCRIPTION

1. DUTY TITLE: RGN HOSPITAL, Clinical Psychologist

2. KEY DUTIES, TASKS AND RESPONSIBILITIES:

Administers and evaluates psychological tests. Trains and supervises technicians in administration of these tests. Provides psychotherapy, mental health evaluations, and consultations to other medical sources.

III. PERFORMANCE FACTORS

1 *Specific example of performance required*

1. JOB KNOWLEDGE *(Depth, currency, breadth)*
Not Observed or Not Relevant; Far Below Standard [ ]; Below Standard [ ]; Meets Standard [ ]; Above Standard [ ]; Well Above Standard [X]

Captain Goldman is a very well trained clinical psychologist who applies his knowledge and experience in an exceptionally fine manner. He actively pursues continuing education through current literature and other methods.

2. JUDGMENT AND DECISIONS *(Consistent, accurate, effective)*

Not Observed or Not Relevant; Far Below Standard [ ]; Below Standard [ ]; Meets Standard [ ]; Above Standard [ ]; Well Above Standard [X]

Demonstrates excellent judgment and maturity. He consistently makes good assessment and disposition regarding a broad range of mental health problems.

3. PLAN AND ORGANIZE WORK *(Timely, creative)*

Not Observed or Not Relevant; Far Below Standard [ ]; Below Standard [ ]; Meets Standard [ ]; Above Standard [ ]; Well Above Standard [X]

His work is well organized and planned in a timely fashion to meet the numerous responsibilities of a clinical psychologist.

4. MANAGEMENT OF RESOURCES *(Manpower and material)*

Not Observed or Not Relevant; Far Below Standard [ ]; Below Standard [ ]; Meets Standard [ ]; Above Standard [ ]; Well Above Standard [X]

Manpower and materials are managed very effectively. He is careful in his use of resources to maximize the benefit of both the patient and the Air Force.

5. LEADERSHIP *(Initiative, accept responsibility)*
Not Observed or Not Relevant; Far Below Standard [ ]; Below Standard [ ]; Meets Standard [ ]; Above Standard [ ]; Well Above Standard [X]

Shows a high degree of motivation and initiative. Not only does Captain Goldman accept responsibility, he actively seeks additional duties and positions of leadership.

6. ADAPTABILITY TO STRESS *(Stable, flexible, dependable)*

Not Observed or Not Relevant; Far Below Standard [ ]; Below Standard [ ]; Meets Standard [ ]; Above Standard [ ]; Well Above Standard [X]

Captain Goldman possesses the ability to deal with stressful situations in an efficient, calm and expeditious manner.

7. ORAL COMMUNICATION *(Clear, concise, confident)*

Not observed or Not Relevant; Far Below Standard [ ]; Below Standard [ ]; Meets Standard [ ]; Above Standard [ ]; Well Above Standard [X]

Communicating effectively and confidently has made him a good participant in discussion groups.

8. WRITTEN COMMUNICATION *(Clear, concise, organized)*

Not Observed or Not Relevant; Far Below Standard [ ]; Below Standard [ ]; Meets Standard [ ]; Above Standard [ ]; Well Above Standard [X]

His reports are composed in a concise, organized manner with clarity.

9. PROFESSIONAL QUALITIES *(Attitude, dress, cooperation, bearing)*

Not Observed or Not Relevant; Far Below Standard [ ]; Below Standard [ ]; Meets Standard [ ]; Above Standard [ ]; Well Above Standard [X]

Captain Goldman is very professional in clinical settings and in his interactions with other professional and technical personnel. Attitude and bearing are excellent and he is a credit to the Air Force.

10. HUMAN RELATIONS *(Equal opportunity participation, sensitivity)*

Not Observed or Not Relevant; Far Below Standard [ ]; Below Standard [ ]; Meets Standard [ ]; Above Standard [ ]; Well Above Standard [X]

Demonstrates support of the Equal Opportunity Program and awareness and sensitivity to all ethnic groups.

IV. ASSIGNMENT RECOMMENDATION:

1. STRONGEST QUALIFICATION: Administrative and clinical skills
2. SUGGESTED JOB *(Include AFSC):* Clinical Psychologist-Administrative Role, 9186
3. ORGANIZATION LEVEL: Regional Hospital
4. TIMING: 1980

V. EVALUATION OF POTENTIAL:

Compare the ratee's capability to assume increased responsibility with that of other officers whom you know in the same grade. Indicate your rating by placing an "X" in the designated portion of the most appropriate block.

	[X]	[X]	[X]
Lowest			*Highest*
	[ ]	[ ]	[ ]
	Rater	Addn Rater	Indorser
	[ ]	[ ]	[ ]
	Rater	Addn Rater	Indorser
	[ ]	[ ]	[ ]
	Rater	Addn Rater	Indorser

VI. RATER COMMENTS

Captain Goldman is an essential member of the professional staff. The Air Force is a more effective organization because of the care provided to active duty, retired and dependent personnel. His expertise, enthusiasm and productivity have contributed immensely to making Mental Health the excellent department that it is. His initiative and leadership are noteworthy and the high professional and military standards he has achieved deserve recognition. Promotion is strongly supported without reservation.

NAME, GRADE, BR OF SVC, ORGN, COMD, LOCATION
WILLIAM E. MURRAY, Lt Colonel, USAF
USAF Regional Hospital (SAC)
March AFB, CA

DUTY TITLE Chairman Dept of Medicine

DATE 20 Oct 80

SSAN 240-32-5956FV

SIGNATURE /s/ William E. Murray

VII. ADDITIONAL RATER COMMENTS

[X] CONCUR [ ] NONCONCUR

Captain Goldman has performed exceptionally well as senior clinical psychologist and Chief of Psychological Services. His clinical skills were vital to the operation of the mental health function during part of this reporting period when no psychiatrist was assigned. This highly motivated individual has been essential in providing individual and group psychotherapy. He is an expert in performance and interpretation of psychological tests. Capt. Goldman has significantly increased his knowledge of Air Force Regulations that pertain to mental health and the disposition of patients. Valuable suggestions have been made and he has done an excellent job of supervising/training technicians. Promotion to Major is strongly recommended.

NAME, GRADE, BR OF SVC, ORGN, COMD, LOCATION
EDWARD H. PARKER, JR., Colonel, USAF
USAF Regional Hospital (SAC)
March AFB, CA

DUTY TITLE Chairman Dept of Med/Radiology

DATE 20 Oct 80

SSAN 546-50-9095FR

SIGNATURE /s/ Edward H. Parker, Jr.

VIII. INDORSER COMMENTS

[X] CONCUR [ ] NONCONCUR

Captain Goldman is an extremely competent clinical psychologist. He has demonstrated superb professional knowledge in the interpretation of psychological tests. Captain Goldman is truly an asset to his profession, this hospital and the United States Air Force. Promotion is strongly recommended.

NAME, GRADE, BR OF SVC, ORGN, COMD, LOCATION
LARRY L. CONRAD, Colonel, USAF
USAF Regional Hospital (SAC)
March AFB, CA

DUTY TITLE Director, Hospital Services

DATE 22 Oct 80

SSAN 315-38-4820FR

SIGNATURE /s/ Larry L. Conrad

PLAINTIFF'S TRIAL EXHIBIT 6

A GUIDE TO JEWISH RELIGIOUS PRACTICE
BY ISAAC KLEIN

THE JEWISH THEOLOGICAL SEMINARY
OF AMERICA
NEW YORK 1979

A GUIDE TO JEWISH RELIGIOUS PRACTICE

This volume is a detailed and comprehensive guide to Jewish practice for home and synagogue, written in the spirit of the Conservative movement.

The compilation is the result of a project conceived in 1960 by Dr. Louis Finkelstein, then Chancellor of the Jewish Theological Seminary, the purpose of which was to produce authoritative halakhic studies for the training of conservative rabbis. Rabbi Isaac Klein, a leading authority on Jewish law, accepted the task and produced a series of pamphlets on Jewish law and practice.

Before long, a widespread demand for access to this invaluable material developed beyond the walls of the Seminary. To answer this demand, and to provide lay members of the Conservative movement with a reliable guide to Jewish practice, these pamphlets, extensively revised and updated by Rabbi Klein, have now been gathered together in a single volume.

The many subjects treated in the volume are discussed in the light of traditional Jewish sources (Bible, Talmud, Codes, Responsa, etc.), and are fully referenced for authentication and further study. The topics covered include virtually everything that might be of interest to the modern Jew: the laws of kashrut and how to keep a kosher home; the meaning and significance of the holidays and how to observe them at home and in the synagogue; laws governing such key life events as marriage, divorce, birth,

adoption, conversion, death, and many others. In addition, the volume includes full dscussions, from the Jewish point of view, of such pressing issues of current concern as euthanasia, organ transplantation, abortion, autopsy, artificial insemination and women's rights. Also included are relevant decisions of the Committee on Jewish Law and Standards of the Rabbinical Assembly.

* * *

DAILY PRAYER 51

In our day of the Mezuzah has become a means of Jewish identification and a symbol of Jewish unity and solidarity all over the world (see Landau, *Tselota d'Avraham,* p. 632).

7. Covering the Head

The theoretical approach to the regulations regarding the covering of the head will lead us into a controversial field. There are sources that make covering the head by a Jewish male a special practice of the pious, [Hebrew words omitted in printing], and there are sources indicating that it is mandatory for all. There are also differing opinions regarding when the custom started and how widespread it was. Proof is brought that in some countries the custom was unknown, while in others it was limited to the times when one was occupied with the performance of sacred acts, such as prayer, the study of sacred literature, or the performance of a religious ritual (see Krauss, "Covering the Head"; Lauterbach, "Worshipping with Covered Heads," in Schwartz, *Responsa of the CCAR,* pp. 208-218, reprinted in Lauterbach, *Studies in Jewish Law, Custom, and Folklore,* pp. 225 ff.; Eisenstein, *Otsar Dinim Uminhagim,* s.v., *Gilui Rosh; Encyclopedia Talmudit,* s.v. *Gilui Rosh.*)

Of one thing we can be sure, however; in the generations preceding ours, the general practice among traditional Jews was to have the head covered at all times.

The reasons given were twofold. First, it was the Jewish way of showing reverence and respect (B. *Qid.* 31a; Maimonides, *Hil. De'ot* 5:6). Secondly, uncovering the head was the custom of the Gentiles; hence, it must be avoided by Jews (see *Encyclopedia Talmudit,* 6:117). Covering the head thus served as a means of identification and a barrier against assimilation.

While the practice was uniform in the generations preceding ours, it now runs the gamut from those Orthodox who retain the old practice of having the head covered at all times to those Reform who discard the custom entirely.

Our practice should be—

a. To cover the head when in the sanctuary of a synagogue (see *O.H.* 91 in *M.A.* 3 and *Peri Megadim,* and in *Eishel Avraham,* ibid., n. 3).

b. To cover the head when praying and when studying or reading from our sacred literature (*O.H.* 282:3).

c. To cover the head when performing a ritual.

d. To cover the head when eating, since eating is preceded and followed by a benediction. (Some follow the custom of certain Jewish communities in Germany and cover their heads during the benedictions before and after the meal but not during the meal itself.)

PLAINTIFF'S TRIAL EXHIBIT 7

Captain Howard Rosman, 097-36-9303 8 July 1974
Military Attire
SG/CC
CSG/CC
IN TURN

1. Request a waiver pertaining to para 1-12b(1), AFM 35-10 which prohibits ornaments on the head while performing duties or in uniform.

2. The reason for this request is that I am a member of the orthodox branch of the Jewish religion. In this religion my head is required to be covered at all times. Request permission to wear a skullcap indoors while performing assigned duties in order to comply with my religious beliefs. My primary duties consist of examination, diagnosis, and treatment of injuries and disease of infants and children.

3. Wearing the service cap, flight cap, or other military headgear out of doors (which I will) pose no problem in as much my head will be covered with them. However, being indoors without a cap does bring about a conflict between my religious beliefs and existing USAF regulations.

/s/ Howard Rosman

HOWARD ROSMAN, Captain, USAF, MC
USAF Hospital, Pease

PLAINTIFF'S TRIAL EXHIBIT 8

SG/CC 9 July 1974

Waiver of Military Attire Requirements
CSG/CC
BW/CC
IN TURN

1. Recommend approval.

2. I have personally interviewed Captain Rosman and find him sincere in his beliefs. This interview also indicated the presence of this belief and adherence to its practice for several years prior to his entering active duty. His belief does not preclude military service which he is doing voluntarily.

3. Because of the criticality of physician manning I am permitting Captain Rosman to continue the wear of the skullcap until finalization of this waiver request as per para 1-3, AFM 35-10. The skullcap in question is small, black, blends in with his hair contour and, indeed, is not noticeable. It does not detract from his appearance, the wear of the uniform, or reflect unfavorably upon his duty or the United States Air Force.

/s/ Frank E. Edmunds, Jr.
FRANK E. EDMUNDS, JR., Colonel, USAF, MC
Commander

1 Atch
Ltr, Dr. Rosman
Cy to: Dr. Rosman

PLAINTIFF'S TRIAL EXHIBIT 9

CC 22 July 1974

Waiver of Military Attire Requirements
SG/CC
Captain Rosman
(In Turn)

1. Reference is made to your letter, dated 8 July 1974, requesting permission to wear a skullcap indoors while performing assigned military duties in uniform. I have con-

sidered the matters presented in your letter, together with those discussed in our meeting of 16 July 1974, and your request is hereby denied.

2. In accordance with the above action, you are hereby directed to perform your military duties as assigned in proper uniform and to refrain from wearing a skullcap anytime while in uniform except during formal religious services, or when outside with the skullcap completely covered by military headgear worn as prescribed in AFM 35-10.

3. You will acknowledge your receipt and understanding of this communication by dated indorsement to SG/CC.

/s/ Richard A. Burpee

RICHARD A. BURPEE, Colonel, USAF
Commander

1st Ind 23 July 1974

Captain Howard Rosman, USAF Hospital, Pease

TO: SG

Receipt Acknowledged.

/s/ Howard Rosman July 23, 1974
HOWARD ROSMAN, Captain, USAF, MC
097-36-9303FV

PLAINTIFF'S TRIAL EXHIBIT 10

Law Offices
MILLER, CASSIDY, LARROCA & LEWIN,
1320 19th Street, N.W. - Suite 500
Washington, D. C. 20036

Area Code 202
Telephone 293-6400

Herbert J. Miller, Jr.
John Joseph Cassidy
Raymond G. Larroca
Nathan Lewin
Martin D. Minsker
William H. Jeffress, Jr.
Thomas D. Rowe, Jr.
A. Raymond Randolph, Jr.
R. Stan Mortenson

Joseph S. McCarthy
Courtney A. Evans
of Counsel

July 25, 1974
HAND DELIVERED

David R. Johnson, Esq.
Office of the General Counsel
Department of the Air Force
Pentagon
Room 4E985
Washington, D. C. 20330

Subject: Captain Howard Joseph Rosman

Dear Mr. Johnson:

Pursuant to our telephone conversation of today, I am hand-delivering this letter to your office to detail the facts regarding Captain Howard Joseph Rosman, who is presently stationed at Pease Air Force Base, in Portsmouth, New Hampshire, and to describe the background of the incident which gives rise to our contention, which we are prepared to take to federal district court, that religious discrimination is being practiced against him.

1. Captain Rosman is a medical doctor, with a specialty in pediatrics. He entered on active duty in the Air Force as of July 1, 1974. His initial assignment was Andrews Air Force Base, but he was reassigned sometime prior to April of this year to Pease Air Force Base, on the stated ground that he did not have any subspecialty in pediatrics.

2. Captain Rosman arrived at Pease Air Force Base in late April or early May of this year for a preliminary tour of the Base. He was shown around the hospital and the Base by one Major Jonas. At that time, Capt. Rosman was wearing civilian clothes and, during his visit to the Base, he wore his skullcap at all times.

David R. Johnson, Esq.
July 25, 1974
Page Two

3. Capt. Rosman is a strictly observant Orthodox Jew. One of the observances he follows with precision — and has done so all his life — involves the wearing of a covering on his head at all times. During his medical studies at New York University, and thereafter while he was an intern and resident at the Bellevue Hospital Center in New York City, Capt. Rosman consistently followed this practice without encountering any opposition or question.

4. Prior to his service in the Air Force, Capt. Rosman worked, on two occasions, for the federal government. In 1970 he was employed at the United States Public Health Service Hospital in Staten Island, and during the summer of 1968 he was employed at the National Institutes of Health in Bethesda. On both those occasions, Capt. Rosman wore his skullcap in the hospital and in the federal installation without any controversy or question being raised about it.

5. Capt. Rosman arrived for duty at Pease Air Force Base on July 1 of this year. He was then wearing civilian clothes. On his first day at the Base, Capt. Rosman was told by Major Jonas that the skullcap "would have to go," because it would not be possible for him to

combine civilian and military clothes. Major Jonas suggested that one possibility, however, was to get a waiver of the uniform regulation (which I am told is found at Air Force Manual 35-10, prohibiting the wearing of any ornamentation on the head with a military uniform).

6. Capt. Rosman immediately requested the waiver in writing. This was done on July 8. That request was endorsed by the commanding officer at the hospital, Colonel Frank E. Edmonds. Col. Edmonds noted on his endorsement that the skullcap was small, black, that it blended with Capt. Rosman's hair, that it was hardly noticeable on his head, and that it in no way interfered with proper discipline.

7. The request went to the commanding officer of the Base, Colonel Richard Burpee. Col. Burpee had a personal meeting with Capt. Rosman, in which Capt. Rosman explained

David R. Johnson, Esq.
July 25, 1974
Page Three

to him his deep religious conviction and his feeling that it was necessary on religious grounds for him, at all times, to wear a covering on his head.

8. On July 23, 1974, Col. Burpee rejected the request for a waiver without stating any reason. He gave Capt. Rosman a written order to remove his skullcap and not to wear it while performing any military duties and while in uniform. The written order stated that Capt. Rosman could wear the skullcap only at formal religious services or when he is outdoors and the skullcap is "completely covered by military headgear." (Obviously, this last exception is totally meaningless since there is no re-

ligious requirement that Capt. Rosman wear *two* coverings on his head). In Capt. Rosman's personal meeting with Col. Burpee, the Colonel explained that he had sworn to uphold the Air Force regulations and if those regulations conflict with religious requirements, he is obliged to follow the regulations.

9. While we do not question Col. Burpee's good faith, it is clear to me — and I submit, it would be clear to any federal court — that the Colonel misunderstands his function. He is also sworn to uphold the Constitution of the United States, which includes, in the First Amendment, a guarantee for the free exercise of religion. There are numerous court decisions which require accommodation to religious practices in these circumstances. See, *e.g., Sherbert* v. *Verner,* 374 U.S. 398 (1963); *Wisconsin* v. *Yoder,* 406 U.S. 205 (1972); *Riley* v. *Bendix Corp.,* 464 F.2d 1113 (5th Cir. 1972). Moreover, the Air Force is obliged in this case not merely to follow the general directive of the First Amendment but it is subject, pursuant to 42 U.S.C. § 2000e-16(a), to the obligations of the Civil Rights Act. That Act specifically directs, in 42 U.S.C. § 2000e(j), that the prohibition against discrimination on account of religion includes "*all aspects* of religious observance and practice." See also 5 C.F.R. § 713.204(g).

I have no doubt whatever that if a civil action were instituted by Capt. Rosman the Air Force regulation regarding

ornamentation on one's head would be overriden by the constitutional command of the First Amendment and by the statutory obligation to accommodate to religious practices. I ask you to please convey this information immediately to Col. Burpee so that this small matter not be amplified into a major case that would bring disrepute upon the military service. Since Capt. Rosman is presently under an order which deprives him of the right to practice his religion, every day and every hour increases the constitutional violation. The matter is of the greatest urgency.

Sincerely yours,
/s/ NATHAN LEWIN

NL:pf

cc: Deputy Assistant Secretary for Equal Opportunity
Room 3B938
Department of Defense

General Counsel
Room 3E980
Department of Defense

Chairman, Civil Service Commission

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 81-1552

S. SIMCHA GOLDMAN,

plaintiff,

v.

SECRETARY OF DEFENSE, *ET AL.*,

defendants,

AFFIDAVIT

I am Donald Dale Reeves, Chaplain, Captain, USAF, SSAN 411-64-9822. I was ordained by the Cumberland Presbyterian Church at Troy, Tennessee, in the year 1961.

My educational background is as follows: Troy High School, Troy, Tennessee, diploma, 1957; Bethel College, McKenzie, Tennessee, B.A., majors—English, Bible, 1961; Vanderbilt University Divinity School, Nashville, Tennessee, M. Div., 1967; Vanderbilt Graduate School of Management, Nashville, Tennessee, postgraduate work, non-degree, 1973.

My vocational experience is as follows:

Teacher: 1962-63, Mt. Juliet High School, Mt. Juliet, Tennessee, duty—English instructor; summer 1965-66, Peabody College Demonstration High School, Nashville, Tennessee, duty—English instructor; 1966-67, Sparta-White County High School, Sparta, Tennessee, duty—English instructor.

Associate Pastor: 1967-68, First Presbyterian Church, Nashville, Tennessee, duties—planner/administration of total Christian education program.

Pastor: 1968-70, First Cumberland Presbyterian Church, Jackson, Tennessee, duties—preaching, administration, counseling.

Psychiatric Hospital Chaplain, 1971-73, Western State Psychiatric Hospital, Bolivar, Tennessee, duties—therapeutic counseling/program administration.

Presbyterial Executive: 1974-77, Murfreesboro Presbytery of the Cumberland Presbyterian Church, Murfreesboro, Tennessee, duties—executive administration of the Presbytery's total programming for its 50 churches.

Writer:

Feature articles: *The Nashville Tennessean,* 19 December 1971; *Progressive Farmer,* March 1973; *The Cumberland Presbyterian,* varied issues over past 20 years.

Church School curricula (adults, youth, children), *United Methodist Publishing House,* 1976-77.

Biweekly feature column: *The Cumberland Presbyterian,* 1978-present.

I have been a Chaplain in the United States Air Force since September 1977. My duty assignments have been:

Offutt Air Force Base, Nebraska, September 1977-June 1980, duties—Staff Chaplain, preaching, counseling, program planning/administration.

King Salmon Air Force Station, Alaska, June 1980-January 1981, duties—Installation Chaplain, total chapel program planning/administration, preaching, counseling.

Maxwell Air Force Base, Alabama, February 1981-present, duties—researcher/writer/resource person for the Chief of Chaplains.

I have undertaken a study of the religious dress requirements/customs of various religious bodies in the United States, particularly as they are related to the wear of the military uniform. The results of my research are at Attachment 1.

/s/ DONALD DALE REEVES
DONALD DALE REEVES
Chaplain, Captain, USAF

1 Atch
Research Data, 11 pp

Subscribed and sworn to before me this 31st day of August, 1981.

/s/ RUTH W. PIERCE

DEFENDANTS' TRIAL EXHIBIT 1

RESEARCH DATA ON RELIGIOUS REQUIREMENTS AND PRACTICES

(Special Interest: Dress/Uniform Codes)

The following charts delineate the uniform and religious dress customs, codes, and requirements of a variety of religious bodies in the United States.

For the sake of order, they are divided into seven denomination/group headings: Christian Heritage Groups, Indian Heritage Groups, Islamic Groups, Japanese Heritage Groups, Jewish Groups, Sikh Groups, and "Other" Groups.

These headings and the bulk of the related information has been gleaned from a study entitled *Religious Requirements and Practices: A Handbook For Chaplains,* which was done for the U. S. Army in April, 1978 (Pamphlet No. 165-13) and revised in April, 1980 (Pamphlet No. 165-13-1). Contractor for this research was Kirschner Associates, Inc., with subcontract work done by The Institute for the Study of American Religion.

This study is denoted on the charts under the column, "Other Printed Information", as DA——; and other reference works consulted are denoted by author, with complete publication data on the Bibliography Sheet.

Original sources of the study are denoted under the column "Original Source of Information" and often show symbols as follows:

(A)=Approved in final draft form by this individual/agency;

(C)=Consulted but did not see the final draft.

CHRISTIAN HERITAGE GROUPS

Denomination/Group	Special Dress/Uniform Requirement(s)	Original Source of Information	Other Printed Information
Berkeley Christian Coalition	None	Denominational Staff Member (A)	DA 165-13: I-7, A-1
The Children of God	None	Denominational Information Officer (A)	DA 165-13: I-14, A-1; Rudin, p. 74-82; Whalen, p. 91.
The Church of Christ Scientist	None	Denominational Staff Member (A)	DA 165-13: I-20, A-1; Boa, p. 81ff; Mead, p. 81ff.
Church of Jesus Christ of Latter Day Saints	Generally none. But specially, "covenanted" members are allowed to wear their "temple garments" under military or civilian clothing.	Counselor to the President of the Church (A)	DA 165-13: I-26, A-1; Boa, p. 64ff; Mead, p. 91ff.
The Foundation Faith of God	None	Denomination Member	DA 165-13-1: I-17.
General Conference of Seventh-Day Adventists	None	Denominational Staff Member (A)	DA 165-13: I-31, A-1; Boa, p. 90ff; Mead, p. 20ff.
Holy Order of MANS	Clerical clothes are worn by all members from earliest stages of training.	Denominational Official (A)	DA 165-13: I-37, A-1.
Holy Spirit Association for the Unification of World Christianity (Moonies)	None	Denominational Staff Member (A)	DA 165-13: I-43, A-1; Boa, p. 167ff; Rudin, p. 31-45; Whalen, p. 47ff.

CHRISTIAN HERITAGE GROUPS (cont'd)

Denomination/Group	Special Dress/Uniform Requirement(s)	Original Source of Information	Other Printed Information
International Christian Ministries	None	Denominational Chaplain (Non-military) (A)	DA 165-13: I-48, A-2.
The Mennonite Church	None	Denominational General Secretary (A)	DA 165-13: I-52, A-2; Mead, p. 167ff.
Religious Society of Friends	None	Denominational General Secretary (A)	DA 165-13: I-59, A-2; Mead, p. 133ff.
The Reorganized Church of Jesus Christ of Latter Day Saints	None	Chairman, Denominational Committee on Ministry to Armed Forces (A)	DA 165-13: I-65, A-2; Mead, p. 95.
Watchtower Bible & Tract Society (Jehovah's Witnesses)	None	Denominational Vice-President (A)	DA 165-13: I-71, A-2; Boa, p. 73ff; Mead, p. 20; Whalen, p. 13ff.
The WAY International	None	Director, Denominational Public Information Office (A)	DA 165-13-1: I-43, A-1; Boa, p. 196ff; Rudin, p. 54-58; Whalen, p. 97.
The Worldwide Church of God	None	Minister of the Denomination (A)	DA 165-13: I-78, A-2; Whalen, p. 28ff.

INDIAN HERITAGE GROUPS

Denomination/Group	Special Dress/Uniform Requirement(s)	Original Source of Information	Other Printed Information
Divine Light Mission	None	Denominational Public Information Department Staff Member (A)	DA 165-13: II-8, A-2; Boa, p. 188ff; Rudin, p. 62-68; Whalen, p. 102ff.
The International Society For Krishna Consciousness (Hare Krishna)	Males wear a tuft of hair *(sikh)* and usually no more than a month's growth of hair. After bathing, telok or clay markings decorate the body in twelve places. Two white parallel lines on the forehead which come to a V-shaped point at the bridge of the nose are the most noticeable of these markings.	Denominational Regional Secretary (A)	DA 165-13: II-14, A-2; Boa, p. 178ff; Petersen, p. 139ff; Rudin, p. 45-54; Whalen, p. 84ff.
Satchidananda Ashram-Integral Yoga	Members of the Sannyas Order (Monkhood) wear the saffron robe. Other members wear simple white clothing. *(Note:* Information incomplete as to whether or not these modes of dress are optional when military service is entered. But military service *is* allowed by denominational standards.)	Publications Editor (A)	DA 165-13-1; II-15, A-1.

INDIAN HERITAGE GROUPS (cont'd)

Denomination/Group	Special Dress/Uniform Requirement(s)	Original Source of Information	Other Printed Information
Sri Chinmoy Centre	Members are "expected" to wear white garments during meditation. Meditation is required in morning and evening. *(Note:* "Spiritual Directives", whether received externally from ones religious superior or internally during meditation, must be obeyed and supercedes any military directives.)	Denominational Information Coordinator (A)	DA 165-13-1; II-19-23, . .-1.
World Plan Executive Council (Transcendental Meditation)	None	National Staff Member (A)	DA 165-13: II-19, A-2; Boa, p. 156ff; Needleman, p. 132ff; Petersen, p. 160; Whalen, p. 75ff.

ISLAMIC GROUPS

Denomination/Group	Special Dress/Uniform Requirement(s)	Original Source of Information	Other Printed Information
Hanafi Madh-Hab Center (Hanafi Muslim Movement)	Females must be covered from head to toe. Hands may show. Loose-fitting garments must be worn. Both males & females must have heads covered when praying, eating, and at all other times (except when retiring to bed).	Denominational Leader (A)	DA 165-13-1: III-7-12; Boa, p. 49ff.
The Islamic Center (Orthodox Islam)	None	Denominational Official (C)	DA 165-13-1: III-16, A-1.
The Sufi Order	None	Denominational Staff Member (A)	DA 165-13: III-11, A-2.
World Community of Islam In the West	Males are forbidden to wear clothes which show the print of the body. Females may show only the face, hands, and below the ankles.	Denominational Official (C)	DA 165-13: III-18, A-2; Mead, p. 60ff, 189ff.

JAPANESE HERITAGE GROUPS

Denomination/Group	Special Dress/Uniform Requirement(s)	Original Source of Information	Other Printed Information
Buddhist Churches of America	None. But members are encouraged to carry Buddhist rosary at all times.	Presiding Bishop (A)	DA 165-13: IV-8, A-2.
Church of Perfect Liberty	An amulet (ring or pendant) must be worn at all times. Perfect Liberty badge is worn on outer garment over the heart by most members. (This is not required but is "encouraged".)	Denominational Official (A)	DA 165-13: IV-14, A-3.
Nichiren Shoshu Academy	None. However, the carrying of a scroll and prayer beads inside or underneath their clothing during military action is "approved".	Denominational Executive Secretary (A)	DA 165-13: IV-19, A-3.
Zen Center of Rochester	All members are asked to wear robes of uniform color & style during group "sittings". (Note: "Sittings"—i.e. group worship —are strongly encouraged but are not required.)	Denominational Leader (A)	DA 165-13: IV-15-20, A-2; Needleman, p. 38ff.

JEWISH GROUPS

Denomination/Group	Special Dress/Uniform Requirement(s)	Original Source of Information	Other Printed Information
Black Hebrew Israelite Nation	None	Anonymous Member (C)	DA 165-13: V-5, A-3; Mead, p. 154.
Conservative Judaism	None	Member of the Rabbinical Assembly (A)	DA 165-13: V-10, A-3; Boa, p. 57ff; Mead, p. 153.
Orthodox Judaism	Incomplete Information. Group Worship is "required". There are "fixed times" for public worship, three times daily: morning, afternoon and evening. If the required number for a "congregation" are not present, "individuals must privately worship." The "minimum equipment" listed as necessary for worship are: Torah or Scroll of the Law and its accouterments, prayer books, Hebrew Bible, skullcaps, prayer shawls, and tfilin (phylacteries), which are to be worn by males at morning prayer (except on the Sabbath). During worship, male	Member of the Rabbinical Council of America (A)	DA 165-13: V-13-18, A-3; Boa, p. 57ff; Mead, p. 152. Rosenzweig p. 71ff; Siegel, p. 49.

JEWISH GROUPS (Cont'd)

Denomination/Group	Special Dress/Uniform Requirement(s)	Original Source of Information	Other Printed Information
	Jews are "required" to keep their heads covered.		
Reconstructionist Jews	Head must be covered when engaged in prayer. Group worship is required. There are "set times for daily, Sabbath and festival services, and Reconstructionist Jews are expected to attend and participate. In the absence of congregational worship services, every Jew can pray privately at his home or wherever he may be."	Member of the Jewish Reconstructionist Foundation (A)	DA 165-13: V-23, A-3; Mead, p. 154.
Reform Jews	None	Director of Rabbinic Placement (A)	DA 165-13: V-28, A-3; Boa, p. 57ff; Mead, p. 152ff.

SIKH GROUPS

Denomination/Group	Special Dress/Uniform Requirement(s)	Original Source of Information	Other Printed Information
Eckankar	None	Denominational Official (A)	DA 165-13-1: VI-6, A-2.
Health, Happy, Holy Organization	All practicing Sikhs must keep their hair (including beards) uncut and turban-tied on top of the head. Also required are: a special underwear, a steel bracelet, and dagger. Official ministers wear a long, hemmed skirt and jodhpur-like pants.	Denominational Official (A)	DA 165-13: VI-1-12, A-3; Boa, 22ff.
Sikh Dharma	Same as above	Same official as above (A)	Same as above

OTHER GROUPS

Denomination/Group	Special Dress/Uniform Requirement(s)	Original Source of Information	Other Printed Information
American Council of Witches	None	High Priest (A)	DA 165-13: VII-7, A-3; Petersen, p. 62ff.
Baha'i Faith	None	Denominational Staff Member (A)	DA 165-13: VII-14, A-3; Mead, p. 32; Petersen, p. 181.
Church of Satan	None	Minister of Information (A)	DA 165-13: VII-19, A-4; Boa, p. 110ff; Petersen, p. 75.
Church of Scientology	None	Denominational Staff Member (A)	DA 165-13: VII-25, A-4; Petersen, p. 87; Whalen, p. 47ff.
The Foundation Faith of The Millenium	None	Denominational Official (A)	DA 165-13: VII-32, A-4.
Gardnerian Wicca	None	Denominational Official (A)	DA 165-13: VII-38, A-4; Boa, p. 110ff; Petersen, p. 62.
The International Church of Ageless Wisdom, Inc.	None	Denominational Official (A)	DA 165-13-1: VII-18, A-2.
Native American Church	None	Denominational Member (C)	DA 165-13: VII-44, A-4.

OTHER GROUPS (cont'd)

Denomination/Group	Special Dress/Uniform Requirement(s)	Original Source of Information	Other Printed Information
Rastafarians	Females must wear skirts or dresses (no pants) and keep head covered in public.	Personal contact with individual members in Jamaica.	DA 165-13-1: VII-29-33; Berrett; Owens.
Universal Church of the Master	None	Denominational Official (C)	DA 165-13-1: VII-37, A-2; Boa, p. 130ff; Mead, p. 234ff; Petersen, p. 47ff.
Universal Life Church	None	Denominational Official (A)	DA 165-13: VII-49, A-4.

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THE CONCISE CODE OF JEWISH LAW

VOLUME ONE

A GUIDE TO PRAYER AND RELIGIOUS OBSERVANCE IN THE DAILY LIFE OF THE JEW

THE CONCISE CODE OF JEWISH LAW

COMPILED FROM
KITZUR SHULHAN ARUCH AND
TRADITIONAL SOURCES

A NEW TRANSLATION WITH INTRODUCTION
AND HALACHIC ANNOTATIONS
BASED ON
CONTEMPORARY RESPONSA

by

RABBI GERSION APPEL

VOLUME ONE

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* * *

he should wipe his hands with some material, and conclude the benediction with "the cleansing of the hands" (Hebrew words omitted in printing). Afterwards, when he obtains water, he should wash his hands without a benediction.

3. Washing of the hands is required on awakening from sleep,[3] after defecating or urinating, after a bath,[4] after cutting one's nails or hair, after taking off one's shoes, after attending a funeral, or upon leaving the house where a corpse lay, and after touching anything unclean or any private part of the body that is generally covered.

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3. *Dressing Before Washing Hands* Where possible one should endeavor to wash his hands upon arising in the morning before putting on his clothing. However, where this is not practicable, one may dress himself before washing his hands.

4. *Washing the Hands in the Bathroom* A bathroom, with modern toilet facilities where the waste matter is flushed away and the room is used for other purposes as well, is nowadays considered to be like the anteroom of a bathhouse. One need not wash his hands upon leaving the bathroom unless he bathed or used the toilet facilities. While it is not permitted to say a blessing or to pray there, it is permitted if necessary to wash one's hands for prayer and the meal. The blessing, however, should be said outside the bathroom.

3. *RULES OF DRESS AND CONDUCT*

(Hebrew words omitted in printing)

1. One should endeavor to be modest in all his ways, as it is written, "And to walk humbly with thy God" (Micah 6:8). Modesty is a great virtue which one should seek to cultivate and observe even in complete privacy, because habit becomes second nature.

2. One must not wear immodest clothing,[1] or clothes that

betoken pride and ostentation. Neither should they be torn or soiled, for though he may be inclined to disregard his own dignity, he must yet be respectful of others.

3. It is forbidden to follow heathen customs,[2] or to imitate them in their dress, or in their way of cutting the hair or letting it grow.

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1. *Wearing Sensually Provocative Clothing* Clothing designed to be sensually provocative should not be worn by men or women. Girls and women should not wear short dresses and mini-skirts which bare the thighs and thus tend to arouse sensual desire. Wearing such clothes, even when in compliance with the vagaries of prevailing fashion, is contrary to the Jewish tradition of modesty in dress, and transgresses the admonition against following immoral alien customs and practices.

2. *Taking an Oath With Head Uncovered.* While a religious person will refrain from taking an oath in court, as it entails mention of God's name, if it becomes necessary for him to do so he should keep his head covered while taking the oath. However, where this is not possible, he may take the oath with head uncovered, since this is the procedure that is normally followed. In these circumstances it is not subject to the prohibition against heathen customs.

4. Immediately upon rising a male should put on the *tallit katan,* for he must not go four cubits (approximately seven feet) without *tzitzit.* If his hands are washed he should say the benediction, (Hebrew words omitted in printing), "Blessed are thou, Lord our God, King of the universe, Who hath sanctified us with His commandments, and commanded us concerning the precept of *tzitzit.*" He should not go bareheaded[3] or utter any holy words

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3. Employment Where One Is Required to Go Bareheaded Wearing a head covering as a sign of humbleness and reverence before God is a revered tradition in Judaism and a token of Jewish identity. One is nevertheless permitted, especially where one's livelihood is involved, to accept employment in a position where he will be required to go bareheaded, inasmuch as covering the head is prescribed by custom but is not demanded by law. However, this applies only to the time and place of his employment, but not at other times.